

**DEPARTMENT OF HEALTH
ENVIRONMENTAL HEALTH ADMINISTRATION
BUREAU OF HAZARDOUS MATERIAL & TOXIC SUBSTANCES
UNDERGROUND STORAGE TANK DIVISION**

NOTICE OF FINAL RULEMAKING

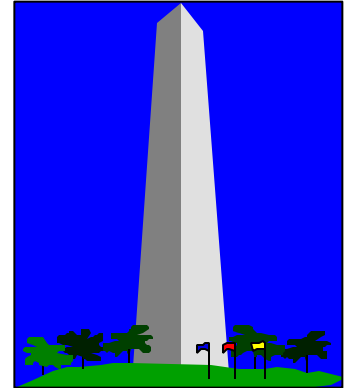
**DISTRICT OF COLUMBIA
UNDERGROUND STORAGE TANK REGULATIONS**

The Director, Department of Health (Department), pursuant to the authority set forth in the District of Columbia Underground Storage Tank Management Act of 1990, D.C. Law 8-242, D.C. Code, Section 6-995 (1995 Repl. Vol.), as amended, and Mayor's Order 98-58, effective April 17, 1998, hereby gives notice of final rulemaking action on Chapters 55 through 67 and new Chapter 70 of Title 20 of the District of Columbia Municipal Regulations (DCMR), the District of Columbia Underground Storage Tank Regulations, published at 40 DCR 7835 (November 12, 1993) and at 43 DCR 2799 (May 24, 1996) incorporating text of Proposed Rulemaking published at 42 DCR 5765 (October 20, 1995), in the District of Columbia Register. Final action to adopt these rules was taken on September 16, 1999 as Chapters 55 through 67, and 70 of Title 20 of the District of Columbia Municipal Regulations (DCMR), "Environment", Subtitle: District of Columbia Underground Storage Tank Regulations". Notice of Proposed Rulemaking was published in the June 4, 1999, edition of the D.C. Register, at 46 DCR 4910. Comments were received and considered. Editorial corrections were made to correct typographical and grammatical errors throughout, to substitute Department of Health for the Department of Consumer and Regulatory Affairs, and to clarify vague and confusing language. The changes do not effect the intent, purposes or meaning of the proposed rulemaking. This final rulemaking will be effective when published in the D.C. Register.

The final rulemaking consists of 14 chapters. The rulemaking includes adoption of a Risk-Based Corrective Action program for releases of petroleum; Voluntary Remediation Action program to encourage interested parties to clean up environmental contamination caused by petroleum releases; Adoption of Federal Lender Liability Rules; Third-party Certification; Provisions for Certification of System Technicians by the District of Columbia. Chapter 67 contains the provisions for determining financial responsibility regarding UST systems. In addition, all chapters of the current regulations, promulgated on November 12, 1993, were streamlined to remove cumbersome procedures or provisions that are no longer applicable, all with the intent of removing obstacles to improve human health and the environmental quality in the Nation's Capital.

The District established a Taskforce that included the U.S. Environmental Protection Agency, the Department of Justice and a broad array of stakeholders from public and private sector. The provisions of this regulation have been developed as a result of a collaborative effort and a successful private/public partnership.

District of Columbia Underground Storage Tank Regulations



District of Columbia Department of Health Environmental Health Administration Bureau of Hazardous Materials & Toxic Substances Underground Storage Tank Division

Anthony A. Williams
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Senior Deputy Director

GOVERNMENT OF THE DISTRICT OF COLUMBIA

**Department of Health
Environmental Health Administration**



The District of Columbia invited a broad array of potential stakeholders to participate, including Control Board Authority, neighborhood commissions, council members, real estate and apartment owners, banks/lenders, environmental groups, industries, universities, civil rights organizations, environmental consultants and contractors, major oil companies, petroleum trade association, and affected federal and the District agencies. Requested 167 affected stakeholders to participate. Received 63 responses from which a working group of 21 stakeholders were selected in coordination with EPA to join the professional staffs from the DOH, Fire Department, the Corporation Counsel, U.S. Environmental Protection Agency (U.S.EPA), Department of Justice (DOJ) and National Oceanic and Atmospheric Administration (NOAA). This taskforce was chaired by Dr. V. Sreenivas, Senior Scientist & Engineer, Environmental Health Administration.

The Stakeholders' Task Force met regularly since November 1998. First notice of Proposed Rulemaking was published on June 4, 1999 for public comments to be submitted by July 5, 1999. The final notice of rulemaking was published on October 1, 1999 (first day of fiscal year 2000). These new regulations are the result of a collaborative effort and a successful public-private partnership in the Nation's Capital. Enclosed is the list of stakeholders' participated in this collaborative effort.

Should have any suggestions for improving the services related to the District's UST and the LUST programs please do not hesitate to write to Dr. Sreenivas, Program Manager/Division Chief, 51 N Street, N.E., Room 3019, Washington, D.C. 20002.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA

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VOL. 46 - NO. 40 FRIDAY, OCTOBER 1, 1999

District of Columbia

REGISTER

HIGHLIGHTS

- * COUNCIL PUBLISHES CONTRACT AND REPROGRAMMING REQUESTS
- * DCRA SCHEDULES HEARINGS ON APPLICATIONS FOR PUBLIC HALL LICENSES
- * DEPT. OF HEALTH ADOPTS FINAL RULES FOR UNDERGROUND STORAGE TANK REGULATIONS
- * BOARD OF ELECTIONS AND ETHICS CERTIFIES ADVISORY NEIGHBORHOOD COMMISSION SMD VACANCIES AND FILLING A VACANCY
- * ZONING COMMISSION ADOPTS FINAL RULES FOR THE ZONING COMMISSION AND BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE
- * OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES PUBLISHES CUMULATIVE LIST OF AMENDMENTS TO D.C. MUNICIPAL REGULATIONS THROUGH SEPTEMBER 30, 1999

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DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS

TITLE 20 ENVIRONMENT UNDERGROUND STORAGE TANK REGULATIONS

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CHAPTER 55**UNDERGROUND STORAGE TANKS:
GENERAL PROVISIONS**

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5501	Applicability of UST Regulations
5502	Partial Applicability of UST Regulations to Particular UST Systems
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5500 COMPLIANCE WITH OTHER DISTRICT LAWS

- 5500.1 Each owner or operator of an UST system shall comply with the following:
- (a) The provisions of the District of Columbia Underground Storage Tank Regulations, Title 20 DCMR Chapters 55-70 (hereinafter referred to as “Subtitle”);
 - (b) The provisions of the District of Columbia Fire Prevention Code Supplement of 1992, Title 12 DCMR, D.C. Construction Codes Supplement of 1992 (hereinafter referred to as “Fire Prevention Code”) pertaining to underground storage tanks;
 - (c) The provisions of the District of Columbia Municipal Regulations (DCMR) that pertain to permits for construction activities (such as excavation, installation, repair, abandonment or removal) related to USTs; and
 - (d) All other applicable laws and regulations.
- 5500.2 The appropriate District of Columbia permits for construction activities performed in conjunction with repair of a leaking UST (LUST) or remediation of a site shall be obtained.
- 5500.3 Owners or operators of USTs on federal facilities shall comply with the requirements of this Subtitle, except the required notice to the District of Columbia Fire Chief shall be given instead to the Fire Chief or an official designated by the federal facility.
- 5500.4 For purposes of enforcement actions brought by the Director, the requirements of these regulations shall govern as to tank installation, upgrades, release detection methods, and the extent, width and depth of excavation for tank removal, site assessment and corrective actions. The Fire Prevention Code shall govern in the case of a fire or safety hazard.

5501 APPLICABILITY OF UST REGULATIONS

- 5501.1 The requirements of this Subtitle shall apply to all underground storage tanks and UST systems located in the District of Columbia, except as otherwise provided in this chapter, and to each owner, operator, and other responsible or remediating party as set forth in this Subtitle.
- 5501.2 Except as provided in this Subtitle, either an owner or operator, and where appropriate another responsible party or a remediating party shall comply with the requirements of this Subtitle. Where neither an owner nor operator complies with the requirements of this Subtitle, both may be held jointly and individually liable for violations of these provisions and any penalties assessed for those violations. A responsible or remediating party may be held jointly and individually liable for violations of those provisions governing LUSTs and corrective actions and any penalties assessed for those violations.
- 5501.3 The following underground storage tank systems are exempt from the requirements of this Subtitle:
- (a) Any UST holding hazardous wastes listed or identified under Subtitle C of the Resource Conservation and Recovery Act, as amended, 42 USC §6901, *et seq.*, or a mixture of any of those hazardous wastes and other regulated substances;
 - (b) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under §307(b) or §402 of the Clean Water Act, 33 USC §1151, *et seq.*;
 - (c) Any UST system that contains a *de minimis* concentration of regulated substances as determined by the Director;
 - (d) Any emergency spill or overflow containment tank that is expeditiously emptied after use;
 - (e) A septic tank;
 - (f) A pipeline facility (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968, 49 USC §1671, *et seq.*, or the Hazardous Liquid Pipeline Safety Act of 1979, 49 USC §2001, *et seq.*;
 - (g) A surface impoundment, pit, pond, or lagoon;
 - (h) A storm-water or wastewater collection system;
 - (i) A flow-through process tank;
 - (j) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; and

- (k) A storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor, and is not covered by any earthen materials along its sides and bottom.

5502 PARTIAL APPLICABILITY OF UST REGULATIONS TO PARTICULAR UST SYSTEMS

5502.1 The following UST systems are required to comply only with the provisions of this section and with the provisions of Chapter 62:

- (a) Wastewater treatment tank systems, including underground oil/water separator tanks, not regulated under §307(b) or §402 of the Clean Water Act, 33 USC §1151 *et seq.*;
- (b) Any UST system containing any radioactive material that is regulated under the Atomic Energy Act of 1954, 42 USC §2011 *et seq.*;
- (c) Any UST system that is part of any emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A;
- (d) Any airport or heliport hydrant fuel distribution system; and
- (e) UST systems with field-constructed tanks.

5502.2 No person may install an UST system identified in §5502.1 for the purpose of storing any regulated substance unless that UST system:

- (a) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;
- (b) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed to prevent the release or threatened release of any stored regulated substance; and
- (c) Is constructed or lined with material that is compatible with the stored regulated substance.

5502.3 In the event of a suspected or confirmed release from a UST system listed in §5502.1, the owner or operator shall comply with all of the provisions of Chapter 56 except §§5600.7(d), 5601 and 5604.

5503 PARTIAL APPLICABILITY OF UST REGULATIONS TO HEATING OIL TANKS

5503.1 Heating oil UST systems having a capacity less than one-thousand-one-hundred (1,100) gallons shall be exempt from the requirements of this Subtitle with the following exceptions:

- (a) In the event of a suspected or confirmed release from the UST system, a responsible or remediating party shall comply with all of the provisions of Chapter 56 except §§ 5600.7(d) and 5601;
- (b) Chapter 62 except that the Director may waive or modify any requirements of Chapter 62 that are inappropriate or unduly burdensome upon consideration of the nature of the release and the degree of contamination.

5503.2 Owners or operators of heating oil tanks having a capacity of one-thousand-one-hundred (1,100) gallons or more shall comply only with the following:

- (a) The provisions of Chapter 56 except the requirement of §5600.7(d);
- (b) Sections 5700.6 and 5703;
- (c) For new heating oil tanks installed after November 12, 1993, §§ 5700.7, 5700.9 through 5700.10, 5704 through 5706;
- (d) Chapter 59; and
- (e) Tanks that are fifteen (15) years old or older, shall use one of the release detection methods set forth below, as applicable:
 - (1) Statistical Inventory Control (SIR) pursuant to §6005;
 - (2) Tank Tightness Testing, once every three (3) years, pursuant to §6007;
 - (3) Automatic Tank Gauging pursuant to §6008;
 - (4) Monthly Ground-water Monitoring pursuant to §6010;
 - (5) Continuous Interstitial Monitoring pursuant to §6011; or
 - (6) Section 6012 (Other Methods);
- (e) The provisions of Chapter 61 pertaining to closure of heating oil tanks; and
- (f) Chapter 62, except that the Director may waive or modify any requirements of Chapter 62 that are inappropriate or unduly burdensome upon consideration of the nature of the release and the degree of contamination.

5503.3 Owners or operators of heating oil tanks having a capacity of one-thousand-one-hundred (1,100) gallons or more shall comply with the release detection requirements set forth in §5503.2.

5504 PARTIAL APPLICABILITY OF UST REGULATIONS TO UST SYSTEMS OF 110 GALLONS OR LESS, HYDRAULIC LIFT TANKS AND ELECTRICAL EQUIPMENT TANKS

5504.1 The following UST systems are required to comply only with the provisions of this section:

- (a) Equipment or machinery that contains regulated substances for operational purposes (such as hydraulic lift tanks and electrical equipment tanks); and
- (b) Any UST system with a capacity of one-hundred-ten (110) gallons or less.

5504.2 Where there is a suspected or confirmed release a responsible or remediating party shall comply with all of the provisions of Chapter 56 except §§5600.7(d) and 5601; and the provisions of Chapter 62.

5505 PARTIAL APPLICABILITY OF UST REGULATIONS TO EMERGENCY GENERATOR UST SYSTEMS

5505.1 Any UST system that stores fuel for use by an emergency power generator shall be subject to the requirements of this Subtitle, except as provided in §§5505.2 and 5505.3.

5505.2 Emergency power generator tanks, that are 15 years old or older, shall use one of the release detection methods set forth below:

- (a) Statistical Inventory Reconciliation (SIR) pursuant to §6005; or
- (b) Manual Tank Gauging pursuant to §6006; or
- (c) Automatic Tank Gauging pursuant to §6009; or
- (d) Monthly Ground Water Monitoring pursuant to §6011; or
- (e) Continuous Interstitial Monitoring pursuant to §6012; or
- (f) §6013 (Other Methods).

5505.3 The provisions of Chapter 61 pertaining to closure shall apply, except an emergency generator tank shall not be deemed temporarily closed until 15 months after it was last used to receive or dispense product.

5506 INDUSTRY CODES AND STANDARDS

- 5506.1 The Director shall periodically issue and update a list of approved standards and codes of practice developed by nationally recognized associations or independent testing laboratories, which shall be used as guidance for compliance with the requirements of this subtitle.
- 5506.2 Alternative codes and standards may be approved by the Director for use with any particular UST or UST system; Provided, that it is demonstrated to the Director that the alternative code or standard is at least as safe and as protective of health and the environment as the existing code or standard.

**CHAPTER 56 TANK NOTIFICATION AND REGISTRATION,
RECORDKEEPING, REPORTS, AND NOTICES**

Secs.	
5600	Notice of Use or installation of an UST system
5601	Registration
5602	Recordkeeping and Reports
5603	Notices of Installation, Removal, Repair, Upgrade, and Testing
5604	Notice of Sale of Real Property
5605	Fees
5606	Third-Party Certification

5600 NOTICE OF USE OR INSTALLATION OF AN UST SYSTEM

- 5600.1 Any owner who has an underground storage tank or UST system that was in the ground on May 8, 1986, or was brought into use thereafter, or who brings an UST or UST system into use, shall submit a notice of the existence of the UST or UST system to the Director, on a form prescribed by the Director (hereinafter notification form). An owner who has previously filed a federal underground storage tank notification form (EPA Form 7530-1 or OMB No. 2050-0068) with the Director shall not be required to file a notice, unless required by the Director in writing for other reasons.
- 5600.2 A notification form shall be completed in accordance with the instructions provided by the Director.
- 5600.3 Pursuant to §3 of the Act, as defined in §7099.1, the notification form required under §5600.1 shall be delivered to the Director within one hundred and twenty (120) days after the effective date of the Act or within thirty (30) days after the tank or UST system is brought into use, and shall contain all information required by §3(a) of the Act and any additional information requested by the Director.
- 5600.4 An owner of a heating oil tank having a capacity of one-thousand-one-hundred (1,100) gallons or greater shall have filed a notification form with the Director by January 12, 1994, or shall file a notification form with the Director within thirty (30) days after the UST or UST system is brought into use.
- 5600.5 An owner required to submit a notification form under §5600.1 of this section may provide notice for several tanks using a single notification form if the tanks are located at the same facility and are being brought into use simultaneously.
- 5600.6 An owner who owns tanks located at more than one (1) facility shall file a separate notification form for each separate facility.

- 5600.7 The owner or operator of a UST system shall sign the notification form required under this section and shall certify compliance with the following requirements except as provided in §5503.2:
- (a) Sections 5706.2; 5706.4 through 5706.7;
 - (b) Sections 5701.2, 5701.3, 5702.2, 5702.3, 5703.2, 5703.3, 5704.3 and 5704.4;
 - (c) Chapter 60; and
 - (d) Chapter 67.
- 5600.8 No person, other than the owner or operator, shall be authorized to sign the notification forms required in §5600.7.
- 5600.9 Any person who purchases an existing UST that has not been permanently closed or any tank that is intended to be used as an underground storage tank for the purposes governed by these regulations as set forth in Chapter 55, must file a new notification form with the Director within 30 days of purchase.
- 5600.10 Any owner of real property who discovers any unknown UST on his/her property, shall notify the Director of the existence of the UST or UST system within seven (7) days of the discovery.
- 5600.11 Any person who deposits regulated substances into an underground storage tank or sells or leases an underground storage tank shall inform the owner or the lessee of the tanks of the notification requirements of this section.
- 5600.12 Each owner or operator of a UST system shall file an amended notification form with the Director within 30 days of any changes to any information required by Section 3 (a) of the Act, as defined in § 7099.1, and any other information required by the Director.
- 5600.13 Each owner or operator of any UST system which has been upgraded or modified in any way, shall ensure that the installer certifies, in the notification form required under this section, that the methods used to upgrade or modify the UST system comply with the requirements of §5801.
- 5600.14 Each owner or operator of a UST system or a responsible party shall file a closure notification form with the Director within 30 days of permanent closure of the UST system by removal or abandonment.

5601 REGISTRATION

- 5601.1 The Director shall register all USTs, governed by these regulations as forth in Chapter 55, in accordance with the procedures set forth in §5601.3.
- 5601.2 An owner of an existing underground storage tank or tanks containing a regulated substance, shall have registered each tank with the Director and shall have paid the required fee, as provided in §5601.9.
- 5601.3 An owner of a tank that is brought into use after November 12, 1993, shall register the tank and shall pay the prescribed registration fee before depositing a regulated substance into the tank, except as provided in §§5601.1 and 5601.7, and except deposit of a regulated substance for the purposes of testing the tank or providing an initial “hold-down” load to ballast the tank.
- 5601.4 Owners of heating oil tanks, having a capacity of one-thousand-one-hundred (1,100) gallons or greater, shall register their tanks on or before January 1, 1997.
- 5601.5 A new owner of an existing UST or an owner of a new UST, governed by these regulations as set forth in Chapter 55, shall initiate the registration process by filing a notification form for each facility pursuant to the requirements of §5600. Upon receipt of a notification form in accordance with the provisions of §5601.8, the Director shall issue a registration invoice to the owner. The owner shall pay the required fee within the time period specified on the invoice.
- 5601.6 The Director shall issue a registration certificate to the owner within thirty (30) days after:
- (a) The registration fee has been received; and
 - (b) The owner has filed a properly completed notification form pursuant to the notification requirements of §5600; and
 - (c) For a new tank, the owner has complied with the installation requirements of §5706; or
 - (d) For an existing UST system, the owner has complied with all the applicable requirements of this Subtitle.
- 5601.7 The registration term shall be January 1 to December 31. The term of registrations issued after January 1 shall be from the date of issuance until the end of the annual registration term. Registration shall not be transferable from owner to owner.

- 5601.8 Commencing January 1, 2000, the annual registration fee shall be prorated by one-twelfth (1/12) per month for each month after January 1 that any tank will be installed or purchased or each month before December 31 that a tank will be closed pursuant to an approved plan.
- 5601.9 The annual registration fee shall be five hundred dollars (\$500) for each tank having a capacity of over ten thousand (10,000) gallons; three-hundred dollars (\$300) for each tank having a capacity of ten -thousand (10,000) gallons or less; and one hundred dollars (\$100) for each home heating oil tank having a capacity of ten-thousand (10,000) gallons or less.
- 5601.10 An owner shall renew the registration for each tank on or before November 30 until such time as:
- (a) The UST has been permanently closed pursuant to §6101;
 - (b) There has been a change in service to a non-regulated substance pursuant to §6101;
 - (c) The UST has been temporarily closed and the regulated substance removed pursuant to §6100; or
 - (d) The owner has sold the UST and has informed the Director in writing of the date of sale and the identity of the purchaser.
- 5601.11 A copy of the registration certificate shall be maintained at the facility at all times. The registration certificate shall be available for inspection at any time during the hours of operation of the facility.
- 5601.12 No person shall deposit a regulated substance into an UST, unless a current registration certificate is present at the facility; and the facility is listed on the current monthly registration list prepared by the Director or the tanker driver is in possession of a copy of the current certificate.
- 5601.13 No owner or operator shall dispense, or permit the dispensing of, a regulated substance from an UST unless the owner has satisfied the registration requirements of this section.
- 5601.14 No owner or operator shall deposit or dispense, or permit the deposit or dispensing of, a regulated substance into an UST, for which registration has been denied, except deposit of a regulated substance for the purpose of testing the tank.
- 5601.15 Any person who sells an UST shall notify the new owner in writing that the new owner has registration obligations under this section and notify the Director of the name and address of the purchaser and the date of the sale.

5602 RECORDKEEPING AND REPORTS

- 5602.1 Owners or operators of UST systems shall cooperate fully with inspections, monitoring, and testing conducted by the Director, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to §9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended.
- 5602.2 Owners or operators shall submit the following information to the Director in accordance with the provisions of this Subtitle:
- (a) Notification forms for all UST systems (§5600), including certification of installation and compliance with the manufacturer's checklist for new or upgraded UST systems (§§5706 or 5801);
 - (b) Notices of installation, major repair, removal, upgrades or testing (§5603);
 - (c) Reports of all spills and overfills (§6201);
 - (d) Reports of all releases including suspected releases (§6202) and confirmed releases (§6203.7(c));
 - (e) Corrective actions planned or taken including initial abatement measures (§6203), free product removal (§6204), comprehensive site assessment (§6205), and corrective action plan (§6207);
 - (f) A notification prior to permanent closure or change-in-service (§6101); and
 - (g) Amended or closure notification forms for any change in ownership or facility information, or tank data. (§5801).
- 5602.3 Owners or operators shall also provide the information required in §5602.2(b), (c), (d), and (f) and the information specified in §§6204.1(c) and 6205.7 to the District of Columbia Fire Chief.
- 5602.4 Each owner or operator shall maintain the following records and information for each facility, in accordance with the provisions of this chapter:
- (a) Documentation of the operation of corrosion protection equipment (§5901);
 - (b) Documentation of UST system repairs (§5902);
 - (c) Recent record of compliance with release detection requirements (§6001); and
 - (d) Results of the site investigation conducted at permanent closure (§6101).

- 5602.5 Each owner or operator shall maintain the records required under §§5602.4 (a), (b) and (c) for a period of ten years. The records for the current and the previous registration year shall be kept at the facility and shall be immediately available for inspection by the Director at the facility. The records for the remainder of the ten-year period may be stored at the facility or at a central location but shall be immediately available for inspection by the Director at the place of storage.
- 5602.6 Each owner or operator shall keep the records required under §5602.4(d) either at a central location or at the facility. The records shall be immediately available for inspection by the Director at the UST site or readily available for inspection by the Director at a single off-site alternative location.
- 5602.7 If an UST system is permanently closed, and if the records cannot be kept at the facility or an alternative location under §5602.6, upon approval by the Director, the owner or operator shall deliver the permanent closure records required under §6101 to the Director.
- 5602.8 Commencing January 1, 2000, any records required to be maintained by an owner or operator shall be kept for the operating life of the UST system unless another time period is specified in the provision requiring maintenance of the record.

5603 NOTICES OF INSTALLATION, REMOVAL, REPAIR, UPGRADE, AND TESTING

- 5603.1 Each owner or operator, or authorized representative of an owner or operator, shall provide notice to the Director in writing or on a form prescribed by the Director (hereinafter, “UST/LUST Activity Notification form”) of each installation, removal, abandonment, repair or upgrade of an UST system, at least five (5) business days prior to the installation, removal, repair or upgrade, except as provided in §5603.3.
- 5603.2 In addition to the notice required pursuant to §5603.1, the owner or operator shall inform the Director orally or in writing of the exact time and date of the installation, removal, abandonment, repair or upgrade of the UST system at least twenty-four (24) hours in advance to schedule an appointment for site inspections, except as provided in §5603.3.
- 5603.3 In the case of an emergency removal or repair, notice shall be provided to the Director and the D.C. Fire Chief as soon as practicable.
- 5603.4 Each owner or operator shall submit to the UST Division, the plans, engineering design and specifications by a business that is licensed and certified to perform UST system activities in the District of Columbia for any installation or upgrade of an UST system. Each owner or operator shall obtain approval of the plans and specifications from the Director before applying for construction permit with the Department of Consumer and Regulatory Affairs.

- 5603.5 The UST Division shall approve, approve with modifications, or disapprove the plans and specifications within five business (5) days of receipt based on the minimum UST technical requirements established by the UST Division. This shall satisfy the notice requirement of §5603.1.
- 5603.6 Each owner or operator shall inform the Director orally or on a UST/LUST Activity Notification form at least twenty-four (24) hours in advance, of the exact time and date of any tank tightness test to be conducted on an UST. In the case of emergency testing, notice shall be provided to the Director as soon as practicable.
- 5603.7 In addition to the notice required pursuant to §5603.6, if a tightness test is performed as a result of a suspected release, the owner or operator shall also inform the Fire Chief orally or in writing, at least forty-eight (48) hours in advance, or in the case of emergency testing, as soon as practicable.
- 5603.8 Owners or operators of USTs on federal facilities shall not be required to give notice to the D.C. Fire Chief as provided in this section, but shall give sufficient notice to the appropriate federal fire chief or official so that the fire chief or official or his or her designee may be at the facility when any installation, removal, abandonment, upgrade, testing or repair of a UST system is performed.

5604 NOTICE OF SALE OF REAL PROPERTY

- 5604.1 Before entering into a contract for sale, any person who sells real property in the District of Columbia upon which underground storage tanks are located, or from which underground storage tanks have been removed during the seller's ownership, shall inform each prospective buyer of the existence or removal of any UST of which the seller has knowledge, on the disclosure form approved by the Director or in a letter incorporating all of the information requested in the form, except as provided in §§5604.3 and 5604.4.
- 5604.2 The seller of real property under this section shall have no obligation to perform a site assessment or other geological investigation to determine if USTs exist on the property, but shall:
- (a) Inform prospective purchasers of any UST of which the seller has actual knowledge; and
 - (b) For the sale of commercial property, inform prospective buyers of any prior use of the property of which seller has actual knowledge, which suggests the existence of tanks on the property.
- 5604.3 Where seller is the owner of a individual condominium unit or cooperative unit, notice shall not be required pursuant to §5604.1.

5604.4 A seller of a single family home may use the disclosure form approved by the Director or include the disclosure required by §5604.1 in the sales contract; Provided, that the purchaser signs an acknowledgement that he or she has read the disclosure prior to signing the balance of the contract, and the language of the disclosure is approved by the Director.

5605 FEES

5605.1 The Director shall charge fees for the following oversight activities as set forth herein:

- (a) Review of plans and specifications and performing site inspections for UST installations shall be two hundred dollars (\$200.00) per tank; and
- (b) Performing site inspections and review of reports related to UST abandonment shall be two hundred dollars (\$200.00) per tank;

5605.2 Reviews identified in §5605.1(a) and (b) shall be completed in 21 days. The initial review period may be extended for an additional two-week period.

5606 THIRD-PARTY CERTIFICATION

5606.1 In lieu of inspection by the Director, an owner or operator may request the Director to approve compliance inspections for UST closures; new UST installations; UST system upgrades, leak detection system(s) and manufacturer required annual maintenance inspections performed by an independent third party inspector who shall be a UST System Technician who is certified by the District of Columbia. If use of an independent third-party inspector is approved by the Director, the Director will accept the report and findings provided the compliance inspection report contains all the information required by the Director.

5605.2 An independent third-party inspector may not have a financial interest in the ownership or operation of the facility or UST system for which he certifies any installation, UST system upgrade, leak detection system or manufacturer required annual maintenance inspection.

CHAPTER 57

NEW TANK PERFORMANCE STANDARDS

Secs.	
5700	Existing and New UST Systems - General Provisions
5701	New Petroleum UST Systems
5702	New Hazardous Substance UST Systems
5703	New Heating Oil UST Systems
5704	New Piping for UST Systems
5705	Spill and Overfill Prevention Equipment for New and Upgraded USTs
5706	Installation of New UST Systems

5700 EXISTING AND NEW UST SYSTEMS - GENERAL PROVISIONS

- 5700.1 The owner or operator of each existing or new petroleum UST system, except for heating oil USTs, shall comply with one (1) of the following:
- (a) UST systems, installed after November 12, 1993, shall meet the UST system performance standards for new petroleum USTs set forth in §5701 of this chapter at the time they are installed; or
 - (b) UST systems, installed on or before December 22, 1988, shall have met the upgrade requirements set forth in Chapter 58 or the permanent closure requirements set forth in Chapter 61 by December 22, 1998 and any applicable requirements for corrective action set forth in Chapter 62; or
 - (c) UST systems, installed prior to November 12, 1993, shall comply with the federal new tank performance standards set forth in 40 CFR §280.20. UST systems in this category which have not met the federal standards must be immediately upgraded to meet these standards, permanently closed in accordance with Chapter 61 or replaced with a UST system which meets the District's new tank performance standards set forth in §5701.
- 5700.2 The owner or operator of each UST system shall ensure that the UST system satisfies the release detection requirements set forth in Chapter 60.
- 5700.3 The owner or operator of each hazardous substance UST system, installed after November 12, 1993, shall ensure that the UST system meets the UST performance standards set forth in §5702.
- 5700.4 Except as provided in §§5700.5, the owner or operator of each existing hazardous substance UST system shall have ensured that no later than December 22, 1994, the UST system:
- (a) Meets the UST performance standards for new hazardous substance USTs set forth in §5702; or
 - (b) Meets the permanent closure requirements set forth in Chapter 61, including applicable requirements for corrective action set forth in Chapter 62.

5700.5 Existing hazardous substance UST systems which were installed or upgraded prior to November 12, 1993, and have complied with the new UST performance standards set forth in §5701 shall be exempt from the requirements of § 5700.4.

5700.6 New heating oil tanks, having a capacity of 1,100 gallons or more must meet the requirements of §5700.7, §5700.9, §5700.10; and §5703, through §5706.

5700.7 In addition to meeting the requirements of this chapter, the owner or operator of each UST system located within one hundred feet (100') (measured horizontally) from the outside wall of a subsurface transit structure shall meet the requirements of the BOCA National Fire Prevention Code, the Fire Prevention Code, as defined in §7099.1, and the National Fire Protection Association (NFPA) 130 pertaining to fixed guideway transit systems.

5700.8 In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, each owner or operator of an underground storage tank or UST system installed after December 22, 1988, shall ensure that each tank meets the applicable requirements set forth in this chapter.

5700.9 Each tank shall be properly designed and constructed, and any portion underground that routinely contains a regulated substance shall be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified by the Director, and in accordance with the BOCA National Fire Prevention Code and the Fire Prevention Code and shall meet the requirements of this chapter.

5700.10 Alternative tank construction and corrosion protection may be approved by the Director, if the tank construction and corrosion protection are determined by the Director to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the other provisions of this chapter.

5701 NEW PETROLEUM UST SYSTEMS

5701.1 Except as provided in §5700.10, each new petroleum underground storage tank, except for heating oil USTs, shall be constructed of:

- (a) Fiberglass-reinforced plastic with double-walled construction or other secondary containment system as set forth in §§5701.4, 5701.5, and 5701.6;
- (b) Steel-fiberglass-reinforced plastic composite with double wall construction or other secondary containment system as set forth in §§5701.4, 5701.5, and 5701.6; or
- (c) Steel with double-walled construction or other secondary containment system as set forth in §§5701.4, 5701.5 and 5701.6, and the tank shall be cathodically protected in accordance with the requirements of §5701.2.

- 5701.2 Each steel tank shall be cathodically protected by being coated with a suitable dielectric material, and in addition:
- (a) Field-installed cathodic protection systems shall be designed by a corrosion expert; and
 - (b) Impressed current cathodic protection systems shall be designed to allow determination of current operating status as required by §5901.6.
- 5701.3 Each cathodic protection system shall be operated and maintained in accordance with §5901.
- 5701.4 Secondary containment systems shall be designed, constructed, and installed to do the following:
- (a) Contain regulated substances released from the tank system until they are detected and removed;
 - (b) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and
 - (c) Check for evidence of a release at least every thirty- (30) days.
- 5701.5 Double-walled tanks shall be designed, constructed, and installed to do the following:
- (a) Contain a release from any portion of the inner tank within the outer wall; and
 - (b) Detect the failure of the inner wall.
- 5701.6 External liner systems (including vaults) shall be designed, constructed, and installed to do the following:
- (a) Contain one hundred ten percent (110%) of the capacity of the largest tank within its boundary;
 - (b) Prevent the interference of precipitation or ground-water intrusion with the ability to contain or detect a release of regulated substances; and
 - (c) Surround the tank completely and be capable of preventing lateral, as well as vertical migration of regulated substances.

5702 NEW HAZARDOUS SUBSTANCE UST SYSTEMS

5702.1 Except as provided in §5700.10, each new hazardous substance underground storage tank shall be:

- (a) Constructed of fiberglass-reinforced plastic, steel-fiberglass-reinforced plastic composite, or steel;
- (b) If constructed of steel, cathodically protected in accordance with the requirements of §5702.2 and;
- (c) Of three hundred sixty degree (360°) double wall construction as set forth in §5702.6.

5702.2 Each steel tank shall be cathodically protected by being coated with a suitable dielectric material, and in addition:

- (a) Field-installed cathodic protection systems shall be designed by a corrosion expert; and
- (b) Impressed current cathodic protection systems shall be designed to allow determination of current operating status as required by §5901.6.

5702.3 Each cathodic protection system shall be operated and maintained in accordance with §5901.

5702.4 Double-walled tanks shall be designed, constructed, and installed to do the following:

- (a) Contain a release from any portion of the inner tank within the outer wall until detected and removed;
- (b) Detect the failure of the inner or outer wall; and
- (c) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system.

5703 NEW HEATING OIL UST SYSTEMS

5703.1 Except as provided in §5700.10, each new heating oil underground storage tank, having a capacity of one thousand and one hundred (1,100) gallons or more, installed after November 12, 1993, whether of single or double-walled construction, shall be constructed of the following:

- (a) Fiberglass-reinforced plastic;
- (b) Steel-fiberglass-reinforced plastic composite; or

- (c) Steel and shall be cathodically protected in accordance with the requirements of §5703.2.
- 5703.2 Each steel tank shall be cathodically protected by being coated with a suitable dielectric material, and, in addition:
 - (a) Field-installed cathodic protection systems shall be designed by a corrosion expert; and
 - (b) Impressed current cathodic protection systems shall be designed to allow determination of current operating status as required by §5901.6.
- 5703.3 Each cathodic protection system shall be operated and maintained in accordance with §5901.
- 5703.4 Secondary containment systems shall be designed, constructed, and installed to do the following:
 - (a) Contain regulated substances released from the tank system until they are detected and removed;
 - (b) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system;
 - (c) In accordance with §6003.7, check for evidence of a release at least every thirty- (30) days.
- 5703.5 Double-walled tanks shall be designed, constructed, and installed to do the following:
 - (a) Contain a release from any portion of the inner tank within the outer wall; and
 - (b) Detect the failure of the inner wall.
- 5703.6 External liner systems (including vaults) shall be designed, constructed, and installed to do the following:
 - (a) Contain one hundred ten percent (110%) of the capacity of the largest tank within its boundary;
 - (b) Prevent the interference of precipitation or ground water intrusion with the ability to contain or detect a release of regulated substances; and
 - (c) Surround the tank completely and be capable of preventing lateral, as well as vertical migration of regulated substances.

5704 NEW PIPING FOR UST SYSTEMS

- 5704.1 The piping that routinely contains regulated substances and is in contact with earthen materials shall be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory, as specified by the Director.
- 5704.2 Except as provided in §5704.7, underground storage tank system piping shall be constructed of:
- (a) Fiberglass-reinforced plastic;
 - (b) Steel and shall be cathodically protected in accordance with the requirements of §5901; or
 - (c) Other materials approved by the Director in accordance with §5704.8.
- 5704.3 Steel UST piping shall be cathodically protected by being coated with a suitable dielectric material, and, in addition:
- (a) Field-installed cathodic protection systems shall be designed by a corrosion expert; and
 - (b) Impressed current cathodic protection systems shall be designed to allow determination of current operating status as required by §5901.6.
- 5704.4 Each cathodic protection system shall be operated and maintained in accordance with §5901.
- 5704.5 Except as provided in §5704.7, underground piping for hazardous substance USTs, and pressurized underground piping for all petroleum USTs shall be equipped with secondary containment features that are designed and constructed in compliance with the requirements of §5701.4 of this chapter.
- 5704.6 For the purposes of this section, “pressurized underground piping” includes pressurized supply lines, return lines, and remote fill lines.
- 5704.7 Secondary containment shall not be required for vent pipes, Stage II vapor recovery pipes, vertical fill pipes, or piping for hazardous substance USTs used for industrial use.
- 5704.8 Other materials and construction techniques may be used for UST piping if the piping construction and corrosion protection are determined by the Director to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the other provisions of this section.

5705 SPILL AND OVERFILL PREVENTION EQUIPMENT FOR NEW AND UPGRADED USTs

- 5705.1 Except as provided in §5705.3, to prevent spilling associated with the transfer of regulated substances to an UST system, each owner or operator must use spill prevention equipment (such as a spill catchment basin) that will prevent release of regulated substances when the transfer hose is detached from the fill pipe.
- 5705.2 The spill prevention equipment shall have a minimum capacity of ten (10) gallons.
- 5705.3 Except as provided in §5705.5, to prevent overfilling associated with the transfer of regulated substances, each owner or operator shall use overfill prevention equipment that does the following:
- (a) Automatically shuts off flow into the tank when the tank is no more than ninety-five percent (95%) full;
 - (b) Alerts the transfer operator when the tank is no more than ninety percent (90%) full by restricting the flow into the tank or triggering a high-level alarm;
 - (c) For tanks with a capacity of four thousand (4,000) gallons or more, equipment which will restrict flow thirty (30) minutes prior to overfilling, or automatically shut-off flow into the tank so that none of the fittings located on the top of the tank are exposed to product due to overfilling.
- 5705.4 Tanks that are susceptible to over-pressurization, shall only use an automatic shutoff valve to comply with §5705.3.
- 5705.5 An owner or operator shall not be required to provide and use the spill and overfill prevention equipment specified in this section if:
- (a) Alternative equipment is used that is determined by the Director to be no less protective of human health and the environment than the equipment specified in the other provisions of this section; or
 - (b) The UST system is filled by transfers of no more than twenty-five (25) gallons at one time.

5706 INSTALLATION OF NEW UST SYSTEMS

- 5706.1 Each UST system, including all tanks and piping, shall be installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions, as specified by the Director and in accordance with the BOCA Fire Prevention Code and the Fire Prevention Code.
- 5706.2 Each owner or operator shall ensure that each UST is installed by an UST System Technician, as set forth in Chapter 65 of this Subtitle.
- 5706.3 All work listed in the manufacturer's installation checklist for each item shall be completed for each UST installation.
- 5706.4 Each installation shall be inspected and approved by the Director prior to placement of backfill for completion of installation.
- 5706.5 A precision test shall be performed upon installation of an UST system prior to its use.
- 5706.6 The owner or operator shall ensure that the UST System Technician completes the certification of compliance in accordance with §§5706.2 and 5706.3 provided on the UST notification form approved by the Director in accordance with §5600 of this Subtitle.

CHAPTER 58

UPGRADES OF EXISTING USTs

Secs.	
5800	UST System Upgrades
5801	Tank Upgrades
5802	Upgrading UST System Piping
5803	Upgrading Spill and Overfill Prevention Equipment
5804	Tank Tightness Testing Upon Upgrading

5800 UST SYSTEM UPGRADES

5800.1 Not later than December 22, 1998, the owner or operator of each existing petroleum UST system, except heating oil USTs, shall have ensured that the UST system complies with one (1) of the following:

- (a) For UST systems installed before December 22, 1988, the upgrade requirements set forth in this chapter;
- (b) For UST systems installed after December 22, 1988 and prior to November 12, 1993, the federal mandatory new tank performance standards set forth in 40 CFR 280.20;
- (c) For UST systems installed after November 12, 1993, the new UST system performance standards set forth in Chapter 57; or
- (d) The permanent closure requirements set forth in Chapter 61, and
- (e) Applicable requirements for corrective action set forth in Chapter 62.

5800.2 No person shall deposit a regulated substance into an UST, except heating oil USTs, that has not been upgraded in accordance with §5800.1.

5800.3 Not later than December 22, 1994, the owner or operator of each existing hazardous substance UST system shall ensure that the UST system complies with one (1) of the following:

- (a) The new UST system performance standards set forth in Chapter 57 for hazardous substance UST systems; or
- (b) The permanent closure requirements set forth in Chapter 61, and
- (c) Applicable requirements for corrective action set forth in Chapter 62.

5801 TANK UPGRADES

- 5801.1 Steel tanks shall be upgraded in accordance with the requirements of this chapter. Owners or operators shall follow the manufacturer's specifications or established procedures and practices adopted by a nationally recognized association or an independent testing laboratory, specified by the Director pursuant to §§5506.1 and 5506.2.
- 5801.2 An underground storage tank may be upgraded by internal lining if the following requirements are met:
- (a) The interior of the tank is inspected and assessed to ensure that the tank is structurally sound prior to installing the internal lining in accordance with current practice recommended by the American Petroleum Institute ("API"); and
 - (b) The lining is installed in accordance with the requirements of §5902 of this chapter.
- 5801.3 Within ten (10) years after lining, and every five (5) years thereafter, the interior of the lined tank shall be inspected to ensure it is structurally sound, free of corrosion holes and that the lining is still performing in accordance with original design specifications.
- 5801.4 Tank linings that have lost adhesion, cracked, or otherwise fail to meet original design specifications shall be replaced unless the damaged lining may be repaired and restored to a level of performance in accordance with original design specifications.
- 5801.5 A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of either §5701.2 (a) or (b) and §5701.3, and the integrity of the tank is ensured using one (1) of the following methods:
- (a) The interior of the tank is inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system; or
 - (b) The tank has been installed for less than ten (10) years and is monitored monthly for releases in accordance with §§6008 through 6012; or
 - (c) The tank has been installed for less than ten (10) years and is assessed for corrosion holes by conducting two (2) tank tightness tests that meet the requirements of §6007. The first tank tightness test shall be conducted prior to installing the cathodic protection system. The second tank tightness test shall be conducted between three (3) and six (6) months following the first operation of the cathodic protection system; or

- (d) The tank is assessed for corrosion holes by a method that is determined by the Director to prevent releases in a manner that is no less protective of human health and the environment than a system which complies with §§5801.5 (a) through (c) of this section.

5801.6 An underground storage tank may be upgraded by both internal lining and cathodic protection if the following requirements are met:

- (a) The lining is installed in accordance with the requirements of §5902; and
- (b) The cathodic protection system meets the requirements of either §5701.2 (a) or (b) and §5701.4.

5802 UPGRADING UST SYSTEM PIPING

5802.1 Metal piping that routinely contains regulated substances and is in contact with earthen materials shall be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory, specified by the Director pursuant to §§5506.1 and 5506.2.

5802.2 Metal piping that routinely contains regulated substances and is in contact with earthen materials shall meet the requirements of either §5704.3(a) or (b) and §5704.4.

5802.3 Metal piping that routinely contains regulated substances and is in contact with earthen materials that does not meet the requirements of §§5802.1 and 5802.2, shall be replaced with new piping and satisfy the requirements of §5704.

5803 UPGRADING SPILL AND OVERFILL PREVENTION EQUIPMENT

5803.1 To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems shall comply with new UST system spill and overfill prevention equipment requirements specified in §5705.

5804 TANK TIGHTNESS TESTING UPON UPGRADING

5804.1 Upon completion of an UST system upgrade and prior to placing the UST system in operation, a tank tightness test shall be performed on an UST system that satisfies the precision testing requirements set forth in §6007, unless the tank is upgraded by cathodic protection and the owner or operator complies with §5801.5 (c).

CHAPTER 59 OPERATION AND MAINTENANCE OF USTs

Secs.	
5900	Spill and Overfill Control
5901	Tank Corrosion Protection
5902	Repair of UST Systems
5903	Compatibility

5900 SPILL AND OVERFILL CONTROL

- 5900.1 Each owner, operator or a person-in-charge, as defined in § 7099.1, shall ensure that releases due to spilling or overfilling do not occur. In complying with the requirements of this section, owners, operators and persons-in-charge shall follow a code of practice developed by a nationally recognized association or independent testing laboratory, as specified by the Director.
- 5900.2 Before each transfer is made, the owner, operator or the person-in-charge shall ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank.
- 5900.3 The owner, operator or the person-in-charge shall ensure that each transfer operation is monitored constantly to prevent overfilling and spilling and is performed in accordance with the UST manufacturer's specifications.
- 5900.4 Where product is transferred by means of pressurized delivery, delivery nozzles shall be held open manually.
- 5900.5 Where product is transferred by means of pressurized delivery a vent alarm device shall be installed within one (1) year of November 12, 1993; provided, that the tank is accessible and that said alarm can be installed without the need for excavation.
- 5900.6 If the vent alarm indicates an obstruction to the vent, delivery shall be discontinued until the vent has been cleared.
- 5900.7 The owner or operator shall ensure that the spill prevention equipment is kept clean and dry.
- 5900.8 The owner or operator shall ensure that all fill lines for the UST system are clearly marked to indicate the size of the tank and the type of regulated substance stored. The owner or operator shall satisfy this requirement by one of the following methods:
- (a) Installing a permanent tag or sign immediately adjacent to the fill pipes which states the size of the tank and the specific type of substance stored; or

(b) Applying a color code that conforms to the following requirements:

- (1) Color markings in accordance with API 1637 "Product Identification", shall be painted or placed around the fill or manhole cover in a manner that will readily identify the regulated substance in the storage tank; or
- (2) Regulated substances or products stored in USTs that are not listed in API 1637 may be identified with the standard industry or business color code for the corresponding substance or product; and
- (3) The color code shall be painted on a sign not less than 8 x 10 inches with letters not less than 5/16 inch high, posted at the facility in a prominent location visible from the fill pipe area, and available for inspection at all times to show the size and type of regulated substance stored.

5900.9 Pipes or other openings may not be marked in any way which could be associated with a regulated substance stored at the facility, unless the pipes or openings are used for the transfer of that substance.

5900.10 The owner, operator or any other responsible party shall report, investigate, and clean up any spills and overfills, in accordance with the provisions of Chapter 62 of this Subtitle.

5901 TANK CORROSION PROTECTION

5901.1 Each owner or operator of a steel tank UST system or a steel-fiberglass-reinforced plastic composite UST system with corrosion protection shall comply with the requirements of this section for as long as the UST system is used to store regulated substances.

5901.2 In complying with the requirements of this section, owners or operators shall follow a code of practice developed by a nationally recognized association or independent testing laboratory, as specified by the Director pursuant to §§5506.1 and 5506.2.

5901.3 Each corrosion protection system shall be operated and maintained to continuously provide corrosion protection to the metal components of those portions of the tank and piping system that routinely contain regulated substances and are in contact with the ground.

5901.4 Each UST system equipped with a cathodic protection system shall be inspected for proper operation by a qualified cathodic protection tester within six (6) months of installation and at least once every three (3) years thereafter.

5901.5 Cathodic protection testing shall be done in accordance with criteria set forth in a code of practice developed by a nationally recognized association, as specified by the Director.

5901.6 Each UST system with an impressed current cathodic protection system shall also be inspected every sixty (60) days to ensure the equipment is running properly.

5901.7 For each UST system using cathodic protection, the owner or operator shall maintain records of the operation of the cathodic protection in accordance with §5602, to demonstrate compliance with the performance standards set forth in this section. Cathodic protection records shall include the following:

- (a) The results of testing from the last two (2) inspections required in §5901.4 of this section; and
- (b) The results of the last three (3) inspections required in §5901.6 of this section.

5902 REPAIR OF UST SYSTEMS

5902.1 Each owner or operator of an UST system shall ensure that repairs are made using the proper materials and techniques, and that repairs will prevent releases due to structural failure or corrosion as long as the UST or UST system is used to store regulated substances.

5902.2 In complying with the requirements of this section, owners or operators shall follow a code of practice developed by a nationally recognized association or independent testing laboratory, as specified by the Director.

5902.3 Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory, as specified by the Director.

5902.4 Repairs to or replacement of internal tank linings may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory, as specified by the Director.

5902.5 Metal pipe sections and fittings that have released a regulated substance as a result of corrosion or other damage, or appear to have incurred sufficient corrosion or other damage to constitute a threat of release, shall be replaced in accordance with §5704.

5902.6 Fiberglass pipes and fittings that have released a regulated substance as a result of damage, or appear to have incurred sufficient damage to constitute a threat of a release shall be repaired in accordance with §5704 and the manufacturer's specifications.

5902.7 Flexible pipes that have released a regulated substance as a result of damage, or that appear to have incurred sufficient damage to constitute a threat of a release shall be replaced in accordance with §5704 and the manufacturer's specifications.

5902.8 Each repaired tank and piping shall be tested for tightness with a precision test method in accordance with §§6007 and 6013.3 of this Subtitle upon completion of the repair prior to being placed back in service, unless one (1) or more of the following actions have been taken:

- (a) The repaired tank has been internally inspected in accordance with a code of practice developed by a nationally or locally recognized association or an independent testing laboratory, as specified by the Director; or
- (b) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in §§6008 through 6012 of this chapter; or
- (c) Another test method is used that is determined by the Director to be no less protective of human health and the environment than the other provisions of this subsection.

5902.9 Within six (6) months following the repair of any cathodically protected UST system, the cathodic protection system shall be tested in accordance with the applicable provisions of §§5901.4 through 5901.6 of this Subtitle to ensure that it is operating properly.

5902.10 Each UST system owner or operator shall maintain records of each repair for the remaining operating life of the repaired UST.

5902.11 Each owner or operator shall ensure that each UST system is repaired by a certified UST System Technician.

5902.12 The owner or operator shall ensure that the certified UST System Technician completes the certification of compliance provided on the UST Notification form approved by the Director in accordance with §5600 of this Subtitle.

5903 COMPATIBILITY

5903.1 Each owner or operator shall use an UST system that is made of or lined with materials that are compatible with the substance stored in the UST system.

CHAPTER 60**RELEASE DETECTION**

Secs.	
6000	General Provisions
6001	Release Detection Recordkeeping
6002	Hazardous Substances
6003	Petroleum UST System Tanks
6004	Petroleum UST System Piping
6005	Inventory Control (Statistical Inventory Reconciliation (SIR))
6006	Manual Tank Gauging
6007	Tank Tightness Testing
6008	Automatic Tank Gauging
6009	Vapor Monitoring
6010	Groundwater Monitoring
6011	Interstitial Monitoring
6012	Other Methods of Release Detection

6000 GENERAL PROVISIONS

- 6000.1 Each owner or operator of a new or existing UST system shall provide a method, or combination of methods, of release detection that meets the requirements of this section.
- 6000.2 In choosing a release detection method, the owner or operator shall consult the manufacturer's certification of performance data to ensure the suitability of the chosen methods.
- 6000.3 The owner or operator of each UST system shall comply with the release detection requirements for all pressurized piping set forth in §6004.
- 6000.4 If the owner or operator of any existing UST system cannot apply a method of release detection that complies with the requirements of this chapter, the owner or operator shall complete the closure requirements of Chapter 61.
- 6000.5 In complying with the requirements of this chapter, owners and operators may use a code of practice developed by a nationally recognized association or independent testing laboratory, as specified by the Director.
- 6000.6 Each release detection system shall be capable of detecting a release from any portion of the tank and the connected underground piping that contains or conveys a regulated substance.
- 6000.7 Each release detection system shall be installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.
- 6000.8 Each release detection system shall meet the applicable performance requirements for the particular system set forth in §§6004 through 6013.

- 6000.9 Any performance claims made for a release detection system shall be stated in writing by the equipment manufacturer or installer. Each claim shall include a description of the manner in which the claim was derived or tested.
- 6000.10 Each release detection method or system, except for systems permanently installed on or before December 22, 1990, shall be capable of detecting the leak rate or quantity specified for the applicable method in §6006, 6007, 6008, or 6013, with a probability of detection of ninety-five one-hundredths (0.95) and a probability of false alarm of five one-hundredths (0.05).
- 6000.11 The Director shall not approve a leak detection method or system that does not meet the requirements of this section, that presents a safety hazard, or for which there has been no performance data submitted proving the reliability of the testing method under normal installation and operating conditions.
- 6000.12 When a release detection system does not perform in accordance with the manufacturer's performance requirements or in accordance with the requirements of this Chapter, the owner or operator shall repair or replace the release detection system within forty-five (45) days in accordance with the provisions of this Chapter, unless an alternate release detection system that complies with the requirements of this Chapter is in use.
- 6000.13 The owner or operator shall notify the Director within twenty-four (24) hours of the expiration of the forty-five (45) day period set forth in §6000.12 if the release detection system is not repaired or replaced and comply with the temporary closure requirements set forth in §6100, unless an alternate release detection system that complies with the requirements of this Chapter is in use.
- 6000.14 When a release detection method operated in accordance with the performance standards of §§6004 through 6013 indicates that a release may have occurred, the owner or operator shall notify the Director, in accordance with the provisions of Chapter 62.
- 6000.15 An owner or operator of a heating oil tank having a capacity of one-thousand-one-hundred (1,100) gallons or more shall be required to provide release detection only for a UST which is fifteen (15) years old or older as set forth in §5503.
- 6000.16 An owner or operator of a UST system that stores fuel for use by an emergency generator and is fifteen (15) years or older shall provide release detection for the UST system as set forth in §5505.

6001 RELEASE DETECTION RECORDKEEPING

- 6001.1 The owner or operator of each UST system shall maintain records, in accordance with this section and §5602 of this Subtitle, demonstrating compliance with all applicable requirements of this chapter.

- 6001.2 All written performance claims pertaining to any release detection system that is in use, including the manner in which those claims have been justified or tested by the equipment manufacturer or installer, shall be maintained for at least ten (10) years after the date of installation. Owners or operators shall retain any written performance claims that were in their possession on January 1, 1996 or thereafter and that are currently in their possession in accordance with the times set forth in this section.
- 6001.3 The results of any sampling, testing, or monitoring of an UST system shall be maintained for at least three (3) years, except as provided in §6001.4 of this section.
- 6001.4 The results of tank tightness testing conducted in accordance with §6007 of this chapter shall be retained until the next test of the UST system is conducted.
- 6001.5 Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located at the UST system facility shall be maintained for at least three (3) years after the servicing work is completed.
- 6001.6 All schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for at least ten (10) years from the date of installation of the release detection system. Owners or operators shall maintain all calibration and maintenance schedules that were in their possession on January 1, 1996 or thereafter and are currently in their possession.

6002 HAZARDOUS SUBSTANCES

- 6002.1 Each owner or operator of a hazardous substance UST system shall provide release detection that meets the requirements of this section.
- 6002.2 Release detection for new hazardous substance UST systems shall meet the requirements set forth in §§6003 and 6004 of this Chapter.
- 6002.3 Secondary containment systems shall be checked for evidence of a release at least every thirty (30) days.
- 6002.4 An alternative method of release detection for a hazardous substance system may be approved if the owner or operator does the following:
- (a) Demonstrate to the satisfaction of the Director that the proposed alternative method can detect a release of the stored substance as effectively as any of the methods allowed in §§6006 through 6012 can detect a release of petroleum; and
 - (b) Provide information satisfactory to the Director on effective corrective action technologies, known and potential health risks, the chemical and physical properties of the stored substance, and the characteristics of the UST site.

6002.5 The owner or operator shall obtain approval of the Director to use an alternate release detection method prior to the installation and operation of the new UST system.

6002.6 All existing hazardous substance systems shall meet the release detection requirements for new petroleum UST systems as set forth in §§6003 and 6004.

6003 PETROLEUM UST SYSTEM TANKS

6003.1 Each owner or operator of a petroleum UST system shall provide release detection for tanks in accordance with the provisions of this section, except as provided elsewhere in Chapter 60.

6003.2 Each release detection method used to meet the requirements of this section shall be conducted in accordance with the applicable requirements for that method set forth in §§6005 through 6012 of this chapter.

6003.3 At least once every thirty (30) days, all tanks shall be monitored for releases using one of the methods listed in §§6008 through 6012, except heating oil USTs and tanks with a capacity of 550 gallons or less, may use either tank tightness testing, manual tank gauging or inventory control (statistical inventory reconciliation (SIR)) or any combination of these methods to meet the requirements of this section.

6003.4 A tank with a capacity of five hundred fifty (550) gallons or less may be tested by manual tank gauging, conducted weekly in accordance with §6006.

6003.5 Secondary containment systems shall be checked for evidence of a release at least once every thirty (30) days.

6004 PETROLEUM UST SYSTEM PIPING

6004.1 The owner or operator of a petroleum UST system shall regularly monitor all underground piping that contains or conveys regulated substances for releases, in accordance with the provisions of this section.

6004.2 Each method of release detection for petroleum UST system piping, excluding heating oil tanks, shall meet the requirements of this section

6004.3 Underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector.

6004.4 Automatic line leak detectors which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of three gallons per hour (3 gal/hr) at ten pounds per square inch (10 lbs/in²) line pressure within one (1) hour. The owner or operator shall conduct an annual test of the operation of the leak detector, in accordance with the manufacturer's requirements.

- 6004.5 Underground piping that conveys regulated substances under pressure shall have an annual line tightness test conducted in accordance with §6013.3 or have monthly monitoring conducted in accordance with §6013.4.
- 6004.6 Underground piping that conveys regulated substances under suction except those covered under 6004.8 shall either have a line tightness test conducted at least every three (3) years, in accordance with §6004.7, or use a monthly monitoring method conducted in accordance with §6004.9
- 6004.7 Periodic line tightness testing of piping may be conducted only if it can detect a one-tenth gallon per hour (0.1 gal/hr) leak rate at one and one-half (1.5) times the operating pressure and includes testing of return lines as applicable.
- 6004.8 No release detection shall be required for suction piping that is designed and constructed to meet the following standards:
- (a) The below-grade piping operates at less than atmospheric pressure;
 - (b) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
 - (c) Only one (1) check valve is included in each suction line;
 - (d) The check valve is located directly below and as close as practical to the suction pump; and
 - (e) A method, satisfactory to the Director, is provided that allows compliance with the provisions of subparagraphs (b) through (d) of this subsection to be readily determined.
- 6004.9 Any of the methods for release detection for tanks set forth in §§6009 through 6011 of this chapter may be used for piping, in accordance with the provisions of the applicable section, if the method used is designed to detect a release from any portion of the underground piping that contains or conveys regulated substances.

6005 INVENTORY CONTROL [STATISTICAL INVENTORY RECONCILIATION (SIR)]

- 6005.1 Inventory Control [Statistical Inventory Reconciliation (SIR)], shall be conducted monthly to detect release of at least two-tenths gallons per hour (0.2 gal/hr) with a minimum probability of detection of ninety-five one-hundredths (0.95) and a minimum probability for false alarm of five one-hundredths (0.05).

- 6005.2 Owners or operators shall evaluate the accuracy of the selected SIR method by using a separate test procedure to confirm that SIR method can detect leaks at the required level and with the appropriate probabilities of detection and probability of false alarm stated in §6005.1. Owners or operators may have the accuracy of the selected SIR method evaluated and verified through independent third-party certification. Owners or operators shall maintain these evaluation records for a period of ten years.
- 6005.3 The equipment used shall be capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").
- 6005.4 Each delivery shall be made through a drop tube that extends to within six inches (6") of the tank bottom.
- 6005.5 The dispensing of regulated substances shall be metered and recorded within District of Columbia standards for meter calibration or an accuracy of six cubic inches (6 cu.") for every five (5) gallons of regulated substance withdrawn.
- 6005.6 The water level at the bottom of the tank shall be measured at least once each month. The measurement of any water level in the bottom of the tank shall be made to the nearest one-eighth inch (1/8").

6006 MANUAL TANK GAUGING

- 6006.1 Manual tank gauging, conducted weekly, may be used as the sole method of release detection only for tanks with a nominal capacity of five hundred fifty (550) gallons or less. Owners or operators of tanks with a nominal capacity of greater than five-hundred-fifty-one (551) gallons shall not use this method to meet the requirements of this chapter.
- 6006.2 Manual tank gauging shall be conducted in accordance with the provisions of this section.
- 6006.3 Each tank liquid level measurement shall be taken at the beginning and end of a period of at least thirty-six (36) hours during which no liquid is added to or removed from the tank. The level measurements shall be based on an average of two (2) consecutive stick readings taken at both the beginning and the end of the period. The measurements shall be recorded on a form approved by the Director.
- 6006.4 The equipment used for manual tank gauging shall be capable of measuring the level of product over the full range of the height of the tank to the nearest one-eighth inch (1/8").
- 6006.5 The owner or operator shall suspect a release and follow the applicable requirements of Chapter 62 if the variation between beginning and ending measurements taken in accordance with this section exceeds ten (10) gallons or more between weekly test measurements, or an average variation of five (5) gallons or more over four (4) consecutive weekly tests.

6007 TANK TIGHTNESS TESTING

6007.1 Tank tightness testing shall be capable of detecting a one-tenth of a gallon per hour (0.1 gal/hr) leak rate from any portion of the tank that regularly contains or conveys a regulated substance and shall account for the effects of the following factors when detecting a leak rate:

- (a) Thermal expansion or contraction of the regulated substance;
- (b) Vapor pockets;
- (c) Tank deformation;
- (d) Evaporation or condensation; and
- (e) The location of the water table.

6007.2 Owners or operators shall conduct a tightness test to satisfy the installation, upgrade and repair requirements as set forth in Chapter 57, 58 and 59 of this Subtitle before the operation of the UST system.

6007.3 Owners or operators may use tightness testing as the sole method of release detection for heating oil tanks only.

6007.4 Owners or operators may use tightness testing for confirming a suspected release to satisfy the requirements set forth in §6203.

6008 AUTOMATIC TANK GAUGING

6008.1 Automatic tank gauging equipment that tests for the loss of product and conducts inventory control shall meet the requirements of this section.

6008.2 The owner or operator shall ensure that the tank-gauging probe is installed as close as possible to the middle of the tank and not adjacent to the fill pipe or submersible pump.

6008.3 An automatic product level monitor test shall be capable of detecting a two-tenths gallon per hour (0.2 gal/hr) leak rate from any portion of the tank that routinely contains a regulated substance.

6008.4 For tanks installed after November 12, 1993, if automatic tank gauging is to be used as a method of release detection, the tank must be installed horizontally without tank tilt.

6009 VAPOR MONITORING

- 6009.1 A release detection method that monitors or tests for vapors within the soil gas of the excavation zone shall meet the requirements of this section.
- 6009.2 The owner or operator shall assess the excavation zone to ensure compliance with the requirements set forth in this section.
- 6009.3 The materials used as backfill (such as gravel, sand, crushed rock, or similar materials) shall be sufficiently porous to readily allow diffusion of vapors from releases into the excavation zone.
- 6009.4 The stored regulated substance, or a tracer compound placed in the tank system, shall have a volatility that is sufficient to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank.
- 6009.5 The measurement of vapors by the monitoring device shall not be reduced in effectiveness or rendered inoperative by ground water, rainfall, soil moisture, or any other known interference to the point that a release could go undetected for more than fifteen (15) days.
- 6009.6 The level of background contamination in the excavation zone shall not interfere with the vapor monitoring method used to detect releases from the tank.
- 6009.7 The vapor monitor used shall be designed and operated to detect any significant increase in concentration above the background concentrations in the excavation zone of any one (1) of the following:
- (a) The regulated substance stored in the tank system;
 - (b) A component or components of the regulated substance; or
 - (c) A tracer compound placed in the tank system.
- 6009.8 Before using vapor monitoring, the owner or operator shall assess the excavation zone to ensure compliance with §§6009.3 through 6009.6 of this section, and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product.
- 6009.9 Monitoring wells shall be clearly marked and secured to avoid unauthorized access and tampering. Monitoring wells shall not be marked in any way that could be associated with a regulated substance stored at the facility.

6010 GROUNDWATER MONITORING

- 6010.1 Testing or monitoring for regulated substances on the ground water or in the tank excavation zone shall meet the requirements of this section.
- 6010.2 The regulated substance stored shall be immiscible in water and have a specific gravity of less than one (1).
- 6010.3 If testing or monitoring for regulated substances on ground water, the ground water shall never be more than twenty feet (20') from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices shall not be less than one one-hundredth of a centimeter per second (0.01 cm/sec). The soil should consist of gravel, coarse to medium sand, coarse silt, or other permeable materials.
- 6010.4 The slotted portion of the monitoring well casing shall be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low ground water conditions.
- 6010.5 Monitoring wells shall be sealed from the ground surface to the top of the filter pack.
- 6010.6 Monitoring wells or devices shall intercept the excavation zone or shall be as close to the excavation zone as is technically feasible.
- 6010.7 Before using ground-water monitoring, the owner or operator shall assess the excavation zone to ensure compliance with §§6010.2 through 6010.6, and to establish the number and position of monitoring wells or devices that will detect releases within the excavation zone from any portion of the tank that routinely contains product. A minimum of two (2) wells shall be required in each excavation zone.
- 6010.8 The continuous monitoring devices or manual methods used shall be capable of detecting the presence of at least one-eighth inch (1/8") of free regulated substance on top of the ground water in a monitoring well.
- 6010.9 Each monitoring well shall be clearly marked and secured to avoid unauthorized access and tampering.

6011 INTERSTITIAL MONITORING

- 6011.1 Interstitial monitoring between an UST system and a secondary barrier immediately around or beneath the UST system may be used, but only if the system is designed, constructed, and installed to detect a leak from any portion of the tank that routinely contains product and also meets the requirements of this section which are applicable to the particular UST system.

- 6011.2 For double-walled UST systems, the sampling or testing method shall be capable of detecting a release through the inner wall in any portion of the tank that routinely contains a regulated substance.
- 6011.3 Where vacuum monitoring is utilized, the vacuum must be maintained at not less than five inches (5") of mercury and shall not exceed manufacturer's instructions. If the vacuum falls below five inches (5") of mercury, the owner or operator shall report a suspected release to the Director. A vacuum shall not be re-instituted more frequently than once every three (3) months without prior approval of the Director.
- 6011.4 For tanks with an internally fitted liner, an automated device shall be used that is capable of detecting a release between the inner wall of the tank and the liner. The liner shall be compatible with the substance stored.
- 6011.5 For UST systems with a secondary barrier within the excavation zone, the secondary barrier shall meet the following requirements:
- (a) The barrier, around or beneath the UST system, shall consist of synthetic constructed material that is sufficiently thick and impermeable to direct a release to the monitoring point and permit its detection. The permeability shall be not greater than one millionth of a centimeter per second (10^{-6} cm/sec) for the regulated substance stored;
 - (b) The barrier shall be compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected; and
 - (c) If the tank is cathodically protected, the barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system.
- 6011.6 An UST system with a secondary barrier within the excavation zone shall use a sampling or testing method that is capable of detecting a release between the UST system and the secondary barrier. The testing or sampling method used shall not be reduced in effectiveness or rendered inoperative by ground-water, rainfall, soil moisture, or any other known interference to the point that a release could go undetected for more than fifteen (15) days.
- 6011.7 The owner or operator of an UST system with a secondary barrier within the excavation zone shall assess the site to ensure that the secondary barrier is always above the ground water and not in a twenty-five (25) year flood plain, unless the barrier and monitoring designs are designed for use under those conditions.
- 6011.8 The monitoring wells for each UST system with a secondary barrier within the excavation zone shall be clearly marked and secured to avoid unauthorized access and tampering.

6012 OTHER METHODS OF RELEASE DETECTION

- 6012.1 The Director may approve an application for the use of another method of release detection if the owner or operator can demonstrate that the method is capable of detecting a release as effectively as any of the methods allowed in §§6007 through 6011 of this chapter, and meets the requirements of this section.
- 6012.2 The alternative release detection method, or combination of methods, shall be capable of detecting either of the following:
- (a) A leak rate of two-tenths gallon per hour (0.2 gal/hour); or
 - (b) A release of one hundred fifty (150) gallons within a month with a probability of detection of not less than ninety-five percent (95%) and a probability of false alarm not greater than five percent (5%).
- 6012.3 In comparing methods, the Director shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected.
- 6012.4 If an alternative method is approved, the owner or operator shall comply with any conditions imposed by the Director on its use to ensure the protection of human health and the environment.

CHAPTER 61 OUT-OF-SERVICE AND CLOSURE OF UST SYSTEMS

Secs.	
6100	Temporary Closure
6101	Permanent Closure or Change-in-Service
6102	Previously Closed UST Systems
6103	Closure Records

6100 TEMPORARY CLOSURE

- 6100.1 For purposes of this section, a UST system shall be deemed temporarily closed when it has been taken out of service for any reason, so that the tank is not being used to receive or dispense product.
- 6100.2 When an UST system is temporarily closed, the owner or operator of the UST system shall comply with the requirements of this section.
- 6100.3 A heating oil tank shall not be deemed temporarily closed until fifteen (15) months after it was last used to receive or dispense product, unless the tank could not have been used to dispense product.
- 6100.4 The owner or operator of an UST system shall inform the Director and the District of Columbia Fire Chief by submitting an amended notification form within seven (7) days of the date the UST system is temporarily closed.
- 6100.5 During the period when an UST system is temporarily closed, but still contains regulated substance, the owner or operator shall continue the operation and maintenance of corrosion protection in accordance with §5901 and release detection in accordance with the provisions of Chapter 60.
- 6100.6 If a release is suspected or confirmed during the period when the UST system is temporarily closed, the owner or operator shall immediately comply with the requirements of §6100.7 and with the applicable requirements of Chapter 62.
- 6100.7 Within ninety (90) days after the date that an UST system is temporarily closed, the owner or operator shall do the following:
- (a) Remove all regulated substances from the UST system and keep the UST system empty for the balance of the temporary closure period. The UST system shall be deemed to be empty when all substances have been removed using commonly employed practices so that either of the following is achieved:
 - (1) No more than two and one-half centimeters (2.5 cm) of residue remains in the UST system; or
 - (2) No more than three-tenths of one percent (0.3%) by weight of the total capacity of the UST system remains in the system;

- (b) Ensure that all vent lines are open and functioning;
- (c) Cap and secure all other lines, pumps, manways, and ancillary equipment; and
- (d) Within seven (7) days after completing the activities required by §6100.7(a) through (c), the owner or operator shall submit to the Director a completed Contractor Certification form:
 - (1) Signed by the independent third-party service provider who performed the activities stated in §6100.7(a) through (c); or
 - (2) Signed by an independent third-party service provider who has inspected and verified that the owner or operator performed the activities stated in §6100.7(a) through (c).

6100.8 Except as provided in §§6100.9 and 6100.10, the owner or operator shall begin procedures to permanently close the UST system in accordance with the requirements of §6101 at the end of twelve (12) months after the UST system is temporarily closed.

6100.9 The owner or operator may submit a written request for an extension to the Director, not less than thirty (30) days before the expiration of the twelve (12) month temporary closure period.

6100.10 The Director in his or her discretion may approve a request for extension of the twelve (12) month temporary closure period for additional twelve (12) month periods. In making this determination, the Director may consider the reasons for the original temporary closure, the reasons for the request for extension, the nature of the site and the surrounding neighborhood, the potential for harm to the environment from an extended temporary closure and delayed reopening of the UST system, the potential for abandonment of the site, and other relevant factors.

6101 PERMANENT CLOSURE OR CHANGE-IN-SERVICE

6101.1 When an UST system is to be permanently closed or is to undergo a change-in-service, the owner, or operator of the UST system, a responsible party or a remediating party shall comply with each of the requirements of this section.

6101.2 The continued use of an UST system to store a non-regulated substance shall be considered a change-in-service. Before each change-in-service, the owner, operator, a responsible party or a remediating party shall empty and clean the tank by removing and properly disposing of all liquid and all accumulated sludge in compliance with any and all applicable laws and regulations.

- 6101.3 Not less than two (2) weeks before beginning either a permanent closure or a change-in-service of an UST system, the owner and operator, a responsible party or a remediating party shall notify the Director, by submitting a UST/LUST Activity Notification form. Notice shall not be required if such action is taken pursuant to a corrective action plan approved by the Director.
- 6101.4 In complying with the requirements of this section, owners or operators of UST systems, a responsible party or a remediating party shall follow a code of practice developed by a nationally recognized association or independent testing laboratory, as specified by the Director.
- 6101.5 Before a UST system is removed from the ground, the owner, operator, a responsible party or a remediating party shall empty the UST system, if not already emptied during the temporary closure period, and clean it by removing and properly disposing of all liquids and all accumulated sludges in compliance with any and all applicable laws and regulations.
- 6101.6 For each UST system that is to be closed permanently, the owner, operator, a responsible party or a remediating party shall provide notice to the Director as provided in §5603, and then remove the tank from the ground, unless a tank removal variance is granted by the Director, pursuant to §6101.7.
- 6101.7 An owner, operator, a responsible party or a remediating party may apply for a tank removal variance by submitting the following documents:
- (a) A written request for a tank removal variance;
 - (b) Written certification of the existence of the conditions stated in §6101.7, with supporting documentation, from a registered professional engineer certified by the District of Columbia or a registered professional engineer certified in any of the states of Region III of the Environmental Protection Agency who has secured reciprocal certification in the District of Columbia;
 - (c) A Tank Interior Inspection report or the results of analysis of soil borings taken from soil adjacent to the tank if the interior cannot be inspected; and
 - (d) A Closure Assessment report.
- 6101.8 A tank removal variance may be granted, in the discretion of the Director, when removal of the tank is likely to cause substantial structural damage to buildings or other improvements on the property, or there are other compelling circumstances which make removal of the tank infeasible, however, the owner, operator, a responsible party or a remediating party shall comply with all other requirements of this section and §5600.14. Where a variance is granted, the tank shall be emptied, cleaned and filled with an inert solid material.

- 6101.9 Before permanent closure or a change-in-service of a UST system is completed or a tank removal variance is granted, the owner, or operator of the UST system, a responsible party or a remediating party shall conduct a Closure Assessment of the excavation zone to test for the presence of a release in the areas around the UST system where contamination is most likely to be present.
- 6101.10 In selecting sample types, sample locations, and measurement methods for the Closure Assessment, the owner, operator, a responsible party or a remediating party shall consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ground-water, and other factors appropriate for identifying the presence of a release and shall comply with any requirements of the Director pertaining to the number of samples and the location of soil borings or ground-water monitoring wells.
- 6101.11 If contaminated soils or contaminated ground water, or vapor emissions, in excess of the mandatory clean-up criteria of §§6203.9(a), 6203.13 and 6204.1, are discovered during the Closure Assessment, the owner, or operator, a responsible party or a remediating party shall begin corrective action in accordance with the applicable provisions of Chapter 62, except as provided in §§6101.13 and 6101.14.
- 6101.12 No contaminated soils, excavated during removal of a UST or in undertaking corrective action, shall be stockpiled on site. Soil that has been tested and that does not contain any contaminants shall be placed upon and covered with plastic as a soil erosion control measure. Contaminated soil shall be treated or properly disposed of at an approved facility. When approved by the Director, excavated soils may be stockpiled at the excavation site for no more than ten (10) business days pending completion of testing and analysis for contaminants.
- 6101.13 No contaminated soils that exceed Tier 1 risk-based screening levels as set forth in §6209 and that are excavated (taken from the ground) during the tank removal shall be returned to the excavation pit or used on-site without treatment.
- 6101.14 At tank removal, the owner, operator, a responsible party or a remediating party shall remove, treat and properly dispose of at an approved facility:
- (a) Grossly contaminated soils to the maximum extent practicable as determined by the Director; and
 - (b) Contaminated soils, as set forth in §6101.13 or that have the potential to cause contaminants to leach to ground water.

6101.15 In the case of a release of a regulated substance, an owner, an operator, another responsible party or a remediating party shall evaluate the UST system and excavation zone for permanent closure at the excavation depths and screening levels described in this section:

- (a) After removing contaminated soils to a depth of no more than five (5) feet below the tank bottom and a width of no more than five (5) feet from the sides of the tank, if the levels of chemicals of concern in the soil do not violate the District's Tier 1 screening levels set forth in §6209, and there is no other visible evidence of contamination (such as free product or vapors requiring initial response, initial abatement actions or free product removal pursuant to §§6203 or 6204), no further site assessment shall be required and the UST system shall be considered permanently closed.
- (b) Where soil having levels of chemicals of concern below the Tier 1 screening levels for soil quality cannot be reached after excavating 5 feet below the tank bottom, the responsible party shall take at least one ground-water sample to determine whether any Chemicals of Concern in groundwater violate the Tier 1 screening levels.
- (c) If the owner, operator, another responsible party or remediating party can achieve Tier 1 soil quality standards through the removal of additional soils in the excavation zone; the Tier 1 ground-water standards set forth in section 6210 are not violated; and there is no other visible evidence of contamination (such as free product or vapors requiring initial response, initial abatement actions, or free product removal pursuant to §§6203 or 6204), no further site assessment shall be required and the UST system will be considered permanently closed.
- (d) If after excavation of soils surrounding the UST system the criteria set forth in paragraphs (a), (b) or (c) of this subsection cannot be met, then the owner, operator, another responsible party or a remediating party shall begin corrective action in accordance with the applicable provisions of Chapter 62 as directed by the Director.

6101.16 Within thirty (30) days after completing the permanent closure or change-in-service activities, the owner, operator, a responsible party or a remediating party shall submit a Closure Assessment Report to the Director in a format provided by the Director, and include a closure notification form.

6102 PREVIOUSLY CLOSED UST SYSTEMS

6102.1 If the Director determines that any release or suspected release from an UST system that was abandoned, removed, or permanently closed, poses a current threat or potential threat to human health and the environment, the Director may direct the owner or operator of the UST system or any other responsible party to assess the excavation zone and close the UST system in accordance with the provisions of §6101.

6102.2 If the Director determines that an UST system has not been permanently closed or abandoned in accordance with the provisions of this chapter, the Director shall direct the owner or operator of the UST system or any other responsible party to permanently close the UST system and assess the excavation zone in accordance with the provisions of §6101.

6103 CLOSURE RECORDS

6103.1 Each owner, operator, a responsible party or remediating party shall maintain records in accordance with §5602 of this Subtitle that are capable of demonstrating compliance with closure requirements under this chapter.

6103.2 The results of a Closure Assessment required under §6101.9 shall be maintained, in accordance with the provisions of §5602 for at least three (3) years after completion of permanent closure or change-in-service by one (1) of the following methods:

- (a) By the owner, operator, a responsible party or remediating party who took the UST system out of service;
- (b) By the owner, or operator of an in-service UST system or a responsible party or remediating party for the leaking UST system site; or
- (c) By delivering the records to the Director, in accordance with the provisions of §5602.

**CHAPTER 62 REPORTING OF RELEASES, INVESTIGATION, CONFIRMATION,
ASSESSMENT AND CORRECTIVE ACTION**

Secs.	
6200	Obligations of Responsible Parties
6201	Reporting and Clean-up of Spills and Overfills
6202	Reporting of Releases of Regulated Substances
6203	Site Investigation, Confirmation of Releases, Initial Abatement and Initial Site Assessment
6204	Removal of Free Product
6205	Comprehensive Site Assessment
6206	Risk-Based Corrective Action
6207	Corrective Action Plan and Implementation of Corrective Action Plan
6208	Tier O Standards
6209	Tier I Standards
6210	Upper Concentration Limits For Groundwater
6211	No Further Action and Case Closure Requirements
6212	Public Participation in Corrective Action
6213	Voluntary Remediation Action

6200 OBLIGATIONS OF RESPONSIBLE PARTIES

- 6200.1 Any responsible party, as defined in the District of Columbia Underground Storage Tank Management Act of 1990, as amended, D.C. Law 8-242; D.C. Code §6-995 *et seq.* (1995 Repl.) (“the Act”) and Chapter 70 of this Subtitle, shall be subject to the requirements of this chapter.
- 6200.2 If the actions required pursuant to this chapter are not taken, the Director may undertake the corrective action, and the responsible party or parties shall be jointly and severally liable to the District government for costs as set forth in §6406.
- 6200.3 The provisions of this chapter shall not be construed to alter the private rights at law or equity and liabilities between the neighboring property owner and the UST system owner or operator, or to relieve an UST system owner or operator of any liability he or she may have under statutory or common law for causing the release of the regulated substance which migrated onto a neighboring property.
- 6200.4 The provisions of 40 CFR Sections 280.200 through 280.230 (Subpart I Lender Liability) are incorporated by reference herein and shall apply to all existing and future security interests, including holders of security interests as defined in 40 CFR §280.200(d).

6201 REPORTING AND CLEAN-UP OF SPILLS AND OVERFILLS

- 6201.1 A responsible party shall take immediate action to contain and clean up any spill or overfill of a regulated substance from an UST system.
- 6201.2 A responsible party shall immediately report any spill or overfill to the Director and to the Fire Chief where there is any danger of fire or explosion.

- 6201.3 A responsible party shall immediately contain and clean up a spill or overfill of petroleum that is less than twenty-five (25) gallons. If the clean up cannot be completed within twenty-four (24) hours, the responsible party shall immediately notify the Director.
- 6201.4 If a spill or overfill of petroleum results in a release to the environment of more than twenty-five (25) gallons or causes a sheen on nearby surface water (lakes, ponds, streams, rivers or creeks), a responsible party shall report the release to the Director within twenty-four (24) hours of the occurrence. The responsible party shall begin corrective action in accordance with the applicable provisions of §§6203.9 through 6212 of this chapter.
- 6201.5 A responsible party for a hazardous substance UST system shall immediately report to the Director, the Fire Chief and the D.C. Office of Emergency Management any spill or overfill of a hazardous substance, and the owner or operator shall immediately contain and clean up any such spill or overfill. If the clean up cannot be completed within twenty-four (24) hours, the responsible party shall begin corrective action in accordance with the applicable provisions of §§6203.9 through 6212 of this chapter.
- 6201.6 If a spill or overfill of a hazardous substance results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR Part 302), in addition to the requirements of §6201.5, a responsible party shall also report the release to the federal government's National Response Center and begin corrective action in accordance with the applicable provisions of §§6202 through 6212 of this chapter.
- 6202 REPORTING OF RELEASES OF REGULATED SUBSTANCES
- 6202.1 Any owner, operator or responsible party who has reason to suspect a release from an underground storage tank, as defined in chapter 55, shall notify the Director within twenty-four (24) hours.
- 6202.2 Any authorized agent of a responsible party who knows of a release or has reason to suspect a release from an UST shall notify the owner or operator of the UST system immediately and the Director within 24 hours.
- 6202.3 Any authorized agent of a responsible party; any person who tests, installs, or removes tanks; any person who engages in site investigation, assessment, remediation, or geotechnical exploration; or any public utility company or authorized agent of a public utility company who knows of, or has reason to know of a release, or has reason to suspect a release from an underground storage tank shall inform the owner or operator immediately and shall notify the Director within twenty-four (24) hours of first having knowledge of the suspected release or release.

6202.4 The notification of a release or suspected release may be provided orally or in writing, and shall consist of, if known, the name of the owner, operator and any other responsible party, as well as the location, date, time, volume, and substance of the release or suspected release. The notification shall include, if known, any immediate and ongoing action taken to mitigate the release, any subsequent hazardous conditions caused by the release, and an evaluation of any potential environmental hazard evident by the condition or disposition of the tank.

6202.5 A responsible party shall not knowingly allow any release from an UST system to continue.

6202.6 Owners and operators of UST systems must report to the Director within 24 hours, or another reasonable time period specified by the Director, and follow the procedures in §6203 for any of the following conditions:

- (a) The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water);
- (b) Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and;
- (c) Monitoring results from a release detection method required under §§ 6002 through 6012 that indicate a release may have occurred unless:
 - (1) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or
 - (2) In the case of inventory control, a tank tightness test conducted within seven (7) days does not confirm the initial result.

6202.7 A responsible party shall immediately investigate, conduct initial abatement if necessary, and within seven (7) days of the suspected release confirm to the Director that a release has occurred using the procedures set forth in this chapter.

6202.8 If the Director has reason to believe a release or off-site contamination due to a release has occurred, the Director may require the owner or operator of the UST system to follow the procedures set forth in section §§6202.7 and 6203.

6203 SITE INVESTIGATION, CONFIRMATION OF RELEASES, INITIAL ABATEMENT AND INITIAL SITE ASSESSMENT

- 6203.1 When a release is suspected, a responsible party shall conduct systems tests, in accordance with the requirements for tightness testing set forth in §§6007 and 6013.3 of this Subtitle, to determine whether a release exists in the portion of the tank that routinely contains a regulated substance, or the attached delivery piping, or both.

- 6203.2 A responsible party shall repair, replace, or upgrade the UST system, and begin corrective action in accordance with the applicable provisions of §§6203.9 through 6212 of this chapter if the test results indicate that a release has occurred. Prior to completion of the necessary corrective actions, the UST system may be placed in service once the source of the release has been identified and corrected.
- 6203.3 A responsible party shall also conduct a site investigation, as set forth in §§6203.4 through 6203.6, if:
- (a) The test results for the system, tank, or delivery piping indicate that a release exists; or
 - (b) The test results for the system, tank, and delivery piping do not indicate that a release exists, but environmental contamination detected by visual or analytical data is the basis for suspecting a release.
- 6203.4 The responsible party shall test for the presence of a release where contamination is most likely to be present at the UST site.
- 6203.5 In selecting sample types, sample locations, and measurement methods, the responsible party shall consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, presence of a basement sump pump and other factors appropriate for identifying the presence of released substance and source of the release. Sample types, sample locations and measurement methods shall also comply with Departmental directives and protocols made available by the UST Division.
- 6203.6 If the sample results do not confirm that a release has occurred, no further investigation shall be required.
- 6203.7 Upon confirmation of a release, a responsible party shall perform the following initial response actions:
- (a) Immediately identify and mitigate any fire, explosion, and vapor hazards;
 - (b) Take immediate action to prevent any further release of the regulated substance into the environment; and
 - (c) When confirmation occurs during the seven (7) day investigation period, the responsible party shall notify the Director and the Fire Chief no later than twenty-four (24) hours after confirmation of the release. The report may be made by telephone, electronic mail, facsimile, or hand delivery. A voice mail message shall not be considered telephone notification. An original letter or memorandum signed by the responsible party, or an authorized representative, shall be submitted to the Director within seven (7) days of confirmation of the release.
- 6203.8 Section 6203.7 shall not apply to any UST system excluded under §§5501.3(a) through (f), or any UST system subject to the Subtitle C corrective action requirements under §3004(u) of the Resource Conservation and Recovery Act (RCRA), as amended.

- 6203.9 A responsible party shall take the following initial abatement actions:
- (a) Remove all regulated substance from the UST system, unless the Director approves removal of a lesser amount that is sufficient to prevent further release to the environment. Fulfillment of the requirements of this section is a pre-requisite to the use of risk-based decisionmaking to develop a risk-based corrective action (RBCA) plan pursuant to §6206.
 - (b) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and ground water.
 - (c) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST site and entered into subsurface structures (such as sewers or basements).
- 6203.10 A responsible party shall remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the responsible party shall comply with all applicable provisions of District of Columbia laws and regulations, including regulations pertaining to the management of solid waste (21 DCMR Chapters 7, 8 and 20).
- 6203.11 A responsible party shall conduct an Initial Site Assessment that will evaluate on-site conditions (*i.e.* limited to the area within the property boundaries). In preparing the Initial Site Assessment, a responsible party shall comply with any applicable protocols made available by the UST Division and/or take the following actions:
- (a) Unless the presence and source of the release have been confirmed previously in accordance with the site investigation required by §6203.3 or the closure site assessment of §6101.9, test for the presence of a regulated substance by taking soil borings and by installing monitoring wells where contamination is most likely to be present at the UST site. Analyze the levels of contaminants in the soil borings and groundwater samples. In selecting sample types, sample locations, and measurement methods, the owner or operator shall consider the nature of the stored substance, the type of backfill, depth to ground water and other factors as appropriate for identifying the presence and source of the release.
 - (b) Summarize the initial response actions taken pursuant to § 6204.
 - (c) Summarize the initial abatement actions taken pursuant to this chapter.
- 6203.12 A responsible party shall determine whether free product is present. If any phase of the site investigation determines that free product is present, the responsible party shall begin free product removal as soon as practicable in accordance with §6204 of this chapter.

6203.13 A responsible party shall achieve the upper concentration limits (UCL) for benzene in groundwater, as set by the Director in §6210. Fulfillment of the requirements of this section is a pre-requisite to the use of risk-based decisionmaking to develop a risk-based corrective action (RBCA) plan pursuant to §6206.

6203.14 Within sixty (60) days after release confirmation, a responsible party shall submit to the Director an Initial Site Assessment report for review, and if applicable, include the first monthly status report on the removal of free product. A responsible party shall submit a workplan for future site activities for the Director's information. A responsible party may request a meeting with the Director to discuss the workplan.

6204 REMOVAL OF FREE PRODUCT

6204.1 At sites where investigations under §6203.12 indicate the presence of any free product, the responsible party shall remove measurable free product to the maximum extent practicable as determined by the Director, in accordance with a schedule determined or approved by the Director on a case-by-case basis, while continuing, as necessary, any actions initiated under §§6203 through 6205, or preparing for actions required under § 6206. Fulfillment of the requirements of this section is a pre-requisite to the use of risk-based decisionmaking to develop a risk-based corrective action (RBCA) plan pursuant to §6206.

6204.2 The responsible party shall conduct the removal of free product in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery techniques appropriate to the hydrogeologic conditions at the site.

6204.3 The responsible party shall conduct the recovery and disposal of free product in a manner that properly treats, discharges, recycles or disposes of recovery byproducts in compliance with all applicable laws and regulations.

6204.4 The minimum objective for the design of the free product removal system shall be the abatement of free product migration.

6204.5 The responsible party shall ensure that any flammable substances are handled in a manner that will prevent fire and explosion.

6204.6 Unless directed to do otherwise by the Director, the responsible party shall prepare and submit to the Director, commencing forty-five (45) days after release confirmation and quarterly thereafter, a status report on the removal of any free product, in the format prescribed by the Director, that provides at least the following information:

- (a) The name of the person(s) responsible for implementing the free product removal measures;
- (b) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;
- (c) The type of free product recovery system used;

- (d) Whether any groundwater discharge will take place on-site or off-site during the recovery operation and where this discharge point will be located;
- (e) The type of treatment applied to, and the effluent quality expected from, any such discharge;
- (f) The steps that have been or are being taken to obtain necessary permits for any discharge; and
- (g) The disposition of the recovered free product.

6205 COMPREHENSIVE SITE ASSESSMENT

6205.1 Within sixty (60) days after submission of a workplan pursuant to §6203.14, the responsible party shall submit a Comprehensive Site Assessment to the Director in a form satisfactory to the Director. A Comprehensive Site Assessment shall not be required if the Initial Site Assessment demonstrates that further assessment is not needed.

6205.2 Unless otherwise directed by the Director, the responsible party shall perform a Comprehensive Site Assessment in the time and manner set forth in this section. A Comprehensive Site Assessment shall include, at the minimum, a background search; a complete on-site investigation that fully defines the extent of the release; potential exposure as a result of the release; the levels of Chemicals of Concern and a proposal for the corrective action plan. If an off-site impact occurs or is indicated, the responsible party shall include an off-site investigation as necessary on a case-by-case basis. The following elements shall be included when preparing a Comprehensive Site Assessment, as appropriate to the conditions of the site:

- (a) The nature of the release, including the chemical compounds present, their concentrations, quantity released if known, and their physical and chemical characteristics related to potential human health and environmental impacts and clean-up procedures;
- (b) Data from available sources or site investigations concerning the following factors: surrounding land use; water quality; use and approximate location of wells potentially affected by the release; subsurface soil conditions; climatological conditions; locations of all subsurface utilities that are potential pathways, including sewers, water and gas pipelines, other conduits; and land use;
- (c) The results of the site investigation and any information gained while performing initial abatement measures pursuant to §6203;
- (d) The results of the free product investigations required under §6203.12;

- (e) The areal extent of the release to the degree sufficient to define or determine the physical characteristics and behavior of the impacted soil or ground water including the following: future migration potential; horizontal extent of the release if a characteristic of the chemicals of concern; whether the chemicals of concern are distributed homogeneously or heterogeneously; and vertical delineation on a case-by-case basis when indicated by the presence of wells, aquifers or other water sources in addition to ground water.
 - (f) The physical characteristics of the site, including characteristics affecting the occurrence, distribution, and movement of the released contaminant and characteristics affecting access to the site which may influence the feasibility of investigation and remediation procedures;
 - (g) A qualitative evaluation of the potential risks posed by the release including identification of environmentally sensitive receptors, and estimate of the impacts to human health and the environment that may occur as a result of the release;
 - (h) Comparison of contaminant levels to District soil and groundwater quality risk based screening levels contained in §6209; and
 - (i) Any other information requested by the Director or deemed useful or necessary by the responsible party.
- 6205.3 Activities shall be conducted in accordance with an appropriate Health and Safety Plan. The Health and Safety Plan shall be available for inspection by the Director.
- 6205.4 Upon receipt of the Comprehensive Site Assessment, the Director:
- (a) Shall review and approve the Comprehensive Site Assessment; and
 - (b) May require the responsible party to conduct additional field studies and collect data.
- 6205.5 The responsible party may request an extension of the sixty (60) day deadline set forth in §6205.1 by submitting a written request for an extension to the Director no later than forty-five (45) days after submission of the workplan. The request shall include the following:
- (a) A summary of all work performed and all information gathered to date pursuant to §6205.2;
 - (b) A summary workplan for the additional assessment activities required; and
 - (c) A proposed schedule for completion of the remaining assessment activities and submission of the completed site assessment report.
- 6205.6 The Director may grant or deny the request for extension, or grant the extension with modifications to the work plan or schedule.

6206 RISK-BASED CORRECTIVE ACTION (RBCA) PROGRAM

- 6206.1 Risk-based decision-making (RBDM) and development of a risk-based corrective action (RBCA) plan shall be conducted subject to the terms and conditions set forth in this section and/or as further explained in applicable UST Division protocols and the Risk-Based Decisionmaking Technical Guidance Document.
- 6206.2 Before initiating a risk-based decision-making process to develop a risk-based corrective action plan for petroleum releases, a responsible party shall comply with §§6203 and 6204 as follows:
- (a) Prevent further release from the UST system by removal of all or a lesser amount of the petroleum products from the UST system and/or perform repairs to the UST system;
 - (b) Remove measurable free product to the maximum extent practicable;
 - (c) Achieve the upper concentration limit (UCL) for benzene in groundwater as specified in §6210.
- 6206.3 The following sequence of actions comprises the District's RBCA process:
- (a) Perform an Initial Site Assessment, including identification of potential exposure pathways, take response action(s) as set forth in §6203 and submit a work plan;
 - (b) Complete site classification as defined in Chapter 70;
 - (c) Complete Tier 1 site assessment pursuant to the comprehensive site assessment provisions set forth in § 6205 and as further described in the Risk-Based Decisionmaking Technical Guidance Document;
 - (d) Compare the concentrations of Chemicals of Concern with Tier 1 risk-based screening levels provided in § 6209;
 - (e) If the concentrations exceed Tier 1 screening levels, develop and implement corrective action plan (CAP) to achieve Tier 1 levels or proceed to perform Tier 2 site-specific evaluation as described in the Risk-Based Decisionmaking Technical Guidance Document;
 - (f) Collect additional site-specific information, as necessary for development of Tier 2 site-specific target levels, perform fate and transport analysis, including modeling, to determine points of compliance; apply for and obtain variances for soil or water quality standards if necessary; and
 - (g) Develop and implement a corrective action plan (CAP) to achieve the site specific target levels or monitor for compliance.

6206.4 For purposes of risk-based corrective action (RBCA) in the District of Columbia:

- (a) The Chemicals of Concern (COC) shall include the following petroleum products or by-products:
 - (1) For gasoline: benzene, toluene, ethylbenzene and xylenes (BTEX); Methyl tertiary-Butyl-Ether (MtBE); and gasoline range organics (GRO).
 - (2) For light distillate oils including kerosene, Jet A and JP #s 4, 7 and 8, Naphthalene and diesel range organics (DRO).
 - (3) For diesel, heating fuels and used oils: DRO and Naphthalene;
- (b) The Point of Compliance (POC) shall be:
 - (1) For Tier 1 assessment:
 - (a) At the point of release or in the source area:
 - (b) Groundwater, affected by the contaminant plume including any areas of the plume that are outside of the property boundary in accordance with UST Division protocols and the Risk-Based Decisionmaking Technical Guidance Document; and
 - (c) Soil, throughout the area of the soil contaminated by the release and within the property boundary.
 - (2) For Tier 2 assessment, the point between the source and the potential point of exposure as approved by the Director.
- (c) For residential development of property, the maximum tolerable human health risk for carcinogens shall be one-in-a-million cancer risk level (that is, the criteria represent a one-in-a-million estimated incremental increase in cancer risk over a lifetime). For non-carcinogenic health affects, the hazard quotient and hazard index shall be no greater than “1”.
- (d) The Tier 0 standards and the Tier 1 standards shall be as set forth in §§ 6208 and 6209, respectively.
- (e) The exposure routes shall include ingestion of groundwater or soil; dermal contact with surface water or soil; and inhalation of volatiles.
- (f) For exposure pathways, points of exposure shall include groundwater, surface water, and soil; and transport media shall include leaching to groundwater and soil gas migration into buildings.

- 6206.5 The Risk-Based Decisionmaking Technical Guidance Document shall include or address existing and new UST Division protocols, specific procedures including Tier 0, Tier 1 and Tier 2 RBCA assessment and evaluation procedures, Chemicals of Concern, upper concentration limit criteria, analysis procedures including use of modeling, equations, sampling, corrective action procedures and monitoring requirements for implementation of risk-based corrective action and other explanatory information in accordance with the minimum requirements of this section no later than one (1) year after the effective date of these regulations. UST Division protocols shall continue to provide guidance until the issue of the Risk-Based Decisionmaking Technical Guidance Document.
- 6206.6 If levels of chemicals of concern exceed the Tier 1 standards set forth in §6209, the responsible party may:
- (a) Submit a CAP pursuant to § 6207 to achieve the Tier 1 levels; or
 - (b) Conduct a Tier 2 site specific evaluation following the procedures and protocols for Tier 2 evaluations contained in the Risk-Based Decisionmaking Technical Guidance Document; or
 - (c) Comply with the provisions of §6206.2.
- 6206.7 After completion of the RBCA process, the responsible party may apply for a no-further-action or case closure, as appropriate, pursuant to the requirements of §6211.

6207 CORRECTIVE ACTION PLAN AND ITS IMPLEMENTATION

- 6207.1 At any point after a release is confirmed, the Director may require the responsible party to develop and submit a corrective action plan (CAP) for remediating chemicals of concern in soil and ground water. The CAP shall be submitted according to a schedule and format established by the Director. A responsible party may, after fulfilling the requirements of §§ 6203.9 through 6206 of this chapter, voluntarily submit a CAP for responding to contaminated soil and ground water.
- 6207.2 The responsible party shall submit a plan that provides for adequate protection of human health in accordance with section 6206.4(c) (maximum tolerable human health risks) and the environment, as determined by the Director, and shall modify the corrective action plan as necessary to meet this standard.
- 6207.3 A CAP shall propose a corrective action option for the site that will:
- (a) Perform active or passive remediation at the site within a reasonable period of time to achieve the criteria stated in §§6203.9(a), 6203.13 and 6204.1;
 - (b) Ensure that measurable non-aqueous phase liquids will not exist or are no longer recoverable at the site; and

- (c) Provide appropriate measures to protect those environmentally sensitive receptors that were identified in the comprehensive site assessment;
 - (d) Remediate the site to one (1) of the following standards:
 - (1) Achieve the Tier 1 risk-based screening levels set forth in §§ 6209;
 - (2) Achieve Tier 2 site-specific target levels (SSTLs) approved by the Director; or
 - (3) Where the Responsible Party has elected to perform a Tier 2 evaluation the CAP shall:
 - i. Reduce levels of chemicals of concern to achieve the Tier 2 SSTLs approved by the Director;
 - ii. If applicable, provide for engineering and/or institutional controls acceptable to the Director; and/or
 - iii. Provide for monitoring of the site over a specified period of time to provide technically based assurances that the chemicals of concern on the site will not adversely impact human health, safety or the environment under present, or reasonably foreseeable future uses of the site.
- 6207.4 A CAP shall provide for proper disposal of the contaminated soils removed from the ground, and shall not permit the placement of contaminated soils that exceed Tier 0 standards back into the ground for the purposes of *in situ* remediation or storage, unless specifically agreed to by the Director.
- 6207.5 A site-specific Quality Assurance/Quality Control (QA/QC) Plan for the activities to be carried out during implementation of the CAP must be prepared prior to the implementation of any site activities. The QA/QC Plan shall cover all actions proposed in the CAP, and shall comply with any Departmental guidelines.
- 6207.6 A site-specific Health and Safety Plan, that addresses all applicable federal Occupational Safety and Health Administration (OSHA) regulations shall be prepared in conjunction with the corrective action plan.
- 6207.7 Within sixty (60) days after receipt of a CAP, the Director shall approve or disapprove each CAP. Approval shall be given to a plan only after the Director determines, to his or her satisfaction, that implementation of the CAP will adequately protect human health, safety, and the environment. In making this determination, the Director may consider the following factors, as appropriate:
- (a) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;

- (b) The hydrogeologic characteristics of the facility and the surrounding area;
- (c) The proximity, quality, and current and reasonably foreseeable future uses of nearby surface water and ground-water;
- (d) The potential effects of residual chemicals of concern on nearby surface water (creeks, ponds, lakes and rivers) and ground water;
- (e) Potential risk to human health or the environment based upon current and reasonably foreseeable future uses of the site;
- (f) The estimated timetable for completion of the remediation; and
- (g) Any information assembled in compliance with this chapter.

6207.8 The Director's approval may contain a determination whether the proposed corrective action is an active or passive corrective action. Passive corrective action may include the following technologies:

- (a) Monitoring of natural attenuation;
- (b) Non-pressurized positive or negative subsurface venting;
- (c) Injection of biological or chemical agents designed to enhance attenuation of subsurface contamination; and
- (d) Any other alternative procedure on a case-by-case basis, as determined by the Director.

6207.9 If such action will minimize environmental contamination and promote more effective corrective action, the responsible party may begin remediation of soil and ground-water before the formal corrective action plan is approved; provided, that the responsible party:

- (a) Notifies the Director and the impacted party(ies) of his or her intention to begin remediation, obtains a provisional acceptance letter from the Director and provides the Director with an opportunity to inspect the site during the corrective action.
- (b) Complies with any conditions imposed by the Director, including halting remediation or mitigating adverse consequences from clean-up activities; and
- (c) Incorporates these self-initiated remediation measures in the corrective action plan (CAP) that is submitted to the Director for approval.

- 6207.10 A responsible party may submit a written request for waiver of the Director's approval of the CAP and begin implementation of the CAP, provided, that the responsible party:
- (a) Has satisfactorily performed another corrective action under the District's Underground Storage Tank Division oversight, within the three (3) years immediately preceding the current request for a waiver of CAP approval;
 - (d) Notifies the Director of his or her intention to begin remediation and provides the Director with an opportunity to inspect the site during the corrective action; and
 - (e) Complies with any conditions imposed by the Director, including halting remediation or mitigating adverse consequences from clean-up activities.
- 6207.11 Except as provided in §§6207.9 and 6207.10, after approval of the corrective action plan, the responsible party shall begin implementation of the plan as approved, including modifications to the plan made by the Director, within thirty (30) days, or in accordance with a schedule agreed to by the Director.
- 6207.12 Except as provided in §§6207.9 and 6207.10, the responsible party shall provide the Director with an opportunity to inspect the site prior to implementation of the plan.
- 6207.13 The responsible party shall monitor, evaluate, and report the results of implementing the plan in a format established by the Director, at least quarterly, or in accordance with a time schedule approved by the Director.
- 6207.14 The responsible party may apply to the Director for modifications of the CAP. The responsible party shall not implement any modifications until approved by the Director.
- 6207.15 If the Director determines that the implemented corrective actions are not achieving adequate protection of human health and the environment, the Director may require additional responses to be taken.
- 6207.16 The responsible party and the Director shall evaluate the effectiveness of each corrective action plan or amendment to the plan at the end of one (1) year of implementation of the plan or amendment to determine whether additional measures must be implemented to protect human health and the environment.
- 6207.17 The Director may, on a case-by-case basis, approve an alternative procedure for remediation of petroleum contaminants from the past releases provided that the responsible party submits a written description of the alternative procedure to the Director and demonstrates to the satisfaction of the Director that compliance with the prescribed procedures is not practical or not feasible, or that the proposed alternative provides equivalent control of petroleum clean-ups.

6208 TIER 0 STANDARDS

The Tier 0 standards for soil shall be the following:

- (a) Total petroleum hydrocarbons (TPH) gasoline range organics (GRO) or diesel range organics (DRO) shall be no greater than one hundred parts per million (100 ppm);
- (b) Total benzene, toluene, ethylbenzene, and total xylenes (BTEX) shall be no more than ten parts per million (10 ppm); and
- (c) Benzene concentration shall be no more than one part per million (1 ppm).

6209 TIER 1 STANDARDS

6209.1 The Tier 1 standards for water shall be as follows:

- (a) The Tier 1 levels for ground water quality shall be the District of Columbia Water Quality Standards for Ground Water (21 DCMR Chapter 11) as outlined by the Director in the Risk-Based Decisionmaking Technical Guidance Document.
- (b) The standard for total petroleum hydrocarbons (TPH) in ground water contaminated by non-gasoline petroleum contamination shall be one part per million (1 ppm).
- (c) The Tier 1 levels for surface water quality are the District of Columbia Water Quality Standards (21 DCMR Chapter 11).
- (d) Methyl tertiary-Butyl-Ether (MtBE) as adopted by the Director in the Risk-Based Decisionmaking Technical Guidance Document.
- (e) Naphthalene as adopted by the Director in the Risk-Based Decisionmaking Technical Guidance Document.

6209.2 Until the Director adopts the Tier 1 quality standards for soil or outlined in the Risk-Based Decisionmaking Technical Guidance Document, the Tier 0 standards for soil shall serve as the interim Tier 1 soil standards.

6210 UPPER CONCENTRATION LIMITS FOR GROUNDWATER

6210.1 The Upper Concentration Limits (UCL) for benzene in ground water at a site contaminated by an underground storage tank shall be fifteen parts per million (15 ppm) or 15,000 parts per billion (15,000 ppb).

6210.2 The Director shall establish UCLs for other chemicals of concern in ground water.

6211 NO FURTHER ACTION AND CASE CLOSURE REQUIREMENTS

- 6211.1 A responsible party, who wishes to secure a No-Further-Action (NFA) letter or a case closure determination, shall submit a written request for a No-Further-Action letter or case closure determination to the Director. The responsible party or an authorized representative shall sign the request. The request shall include a summary of major events and accomplishments during the site investigation and/or remediation process, including to the extent possible, but not limited to, the following:
- (a) The cause of the release if known;
 - (d) The estimated amount and type of product released;
 - (e) The estimated amount of product recovered;
 - (f) An analysis that demonstrates that the site has met the objectives for clean-up or the objectives agreed upon by the Director; and
 - (g) All documents (permits, certificates, approvals, etc.) relating to the transportation and disposal of wastes from the site (i.e. tanks, soils, product, water), unless previously submitted to the Director, the UST Division or another division of the Department of Health; and if previously submitted, a list containing the names of the documents, dates of submission and name of the division.
- 6211.2 All records or reports documenting the transport and disposal of any free product, contaminated water and soil, or other waste that is generated at the site while the corrective action plan is being performed, shall be maintained by the owner, operator or a responsible party for a period of at least three (3) years from the date of issuance of no further action or case closure letter.
- 6211.3 Prior to approving a request for no further action or case closure, the Director shall be satisfied of the following:
- (a) If applicable, that all CAP objectives have been met;
 - (b) That all free product has been removed to the maximum extent practicable;
 - (c) That the site does not pose a threat to human health or the environment; and
 - (d) If applicable, that Tier 1 or Tier 2 levels have been met.
- 6211.4 The Director shall review each request for case closure completed in accordance with this section. If the Director is satisfied that the requirements for case closure set forth in §§6211.1 through 6211.3 have been met, the Director shall issue case closure letter. The closure approval shall not absolve the owner, operator or a responsible party from previously incurred or potential future liability.

- 6211.5 The Director shall review each request for no further action in accordance with this section. If the Director is satisfied that all of the corrective actions required by the Director in accordance with the applicable provisions of this Subtitle have been met, the Director shall issue a No-Further-Action letter. A no-further-action letter shall not absolve the owner, operator or a responsible party from previously incurred or potential future liability.
- 6211.6 In the event the Director denies the request for no further action or case closure, the Director shall provide the responsible party a written notice of denial which states the basis for the denial and informs the responsible party of the procedures to appeal the denial.
- 6211.7 Upon receiving notice from the Director that the no further action or the case closure requirements have been met, the owner, operator or a responsible party shall, as applicable, remove all equipment, and ensure that all wells are properly abandoned, unless otherwise authorized by the Director.

6212 PUBLIC PARTICIPATION IN CORRECTIVE ACTION

- 6212.1 For each release that requires a corrective action plan, the Director shall provide a public notice designed to reach those members of the public directly affected by the release and the planned corrective action.
- 6212.2 Notice may be provided by any of the following methods: publication of notices in local newspapers or the D.C. Register, block advertisements, public service announcements, letters to individual households, personal contacts by field staff, notification to the affected Advisory Neighborhood Commissioners (ANCs) and civic associations.
- 6212.3 Any person directly impacted by a release that has migrated onto their property shall have a right to request a copy of the comprehensive site assessment, any Tier 2 site evaluation and any corrective action plan, and if requested, shall be given an opportunity to comment on the CAP.
- 6212.4 The Director shall give public notice that complies with §§6212.1 and 6212.2 of this section if implementation of an approved corrective action plan does not achieve the established clean-up levels in the plan and termination of that plan is under consideration by the Director.
- 6212.5 The Director shall receive citizens' written complaints that allege violations of the provisions of this Subtitle.
- 6212.6 The Director shall investigate each *bona fide* complaint filed under §6212.5, and shall notify the complainant and the owner or operator of the UST or UST system of the results of that investigation.
- 6212.7 The Director shall not request Corporation Counsel to oppose any application by a private citizen for permissive intervention under Rule 24(b) of the Rules of the Superior Court of the District of Columbia in any civil action to enforce the provisions of the Act or the

applicable provisions of this chapter on the ground that the applicant's interest is adequately represented by the District of Columbia.

6213 VOLUNTARY REMEDIATION ACTION PROGRAM (VRAP)

6213.1 The Director may permit a person, other than an owner, operator or responsible party to remediate leaking underground storage tanks (LUST) facilities or sites in accordance with the provisions of this Subtitle provided that the person:

- (a) Intends to develop a LUST facility or site for personal or business reasons;
- (b) Intends to conduct a phased investigation of a LUST facility or site conditions prior to acquisition or development of a LUST facility or site; or
- (c) Is a neighboring property owner who is unable to obtain relief from the responsible party.

6213.2 Persons who wish to voluntarily remediate LUST facilities or sites shall submit an application to the Director that contains the following information:

- (a) Proof that the applicant satisfies §6213.1(a), (b) or (c);
- (b) A statement of interest in undertaking corrective action at a facility or site;
- (c) Agreement to follow any directives issued by, or agreements reached with, the Director pertaining to preliminary investigation prior to remediation; remediation of the facility or site; and to be liable for satisfactorily completing all corrective actions pursuant to the applicable provisions of Chapters 61 and 62;
- (d) Financial responsibility to satisfactorily complete the remediation; and
- (e) A copy of a written access agreement or any other agreement, which permits access to the facility, site or the property.

6213.3 Upon receiving a Voluntary Remediation Action Request, the Director shall evaluate the request and may, in his or her discretion, approve or deny the request. If approved, the Director shall issue a "Voluntary Remediation Action Program Letter" which shall authorize the Voluntary Remediating Party (VRP) to begin the remediation process.

6213.4 The Voluntary Remediating Party, may at his or her discretion, enter into an agreement to release the responsible party(ies) from liability. A Voluntary Remediating Party who wishes to assume responsible party status shall submit a Responsible Party Transfer Request to the Director. A release granted to a responsible party shall provide that the release may be voided by the Director under the following circumstances:

- (a) The responsible party or the Voluntary Remediating Party submitted false or misleading information to the Director in the Responsible Party Transfer Request;
- (b) The Voluntary Remediating Party fails to complete the agreed upon corrective action and the Department or the United States Environmental Protection Agency expends funds to remediate the facility or site.

6213.5 A Voluntary Remediating Party shall be liable for all work performed at the facility or site and shall only be required to perform the work agreed upon with the Director.

6213.6 A Voluntary Remediating Party (VRP), as described in §§ 6213.2(b) or (c), other than a VRP who has released the original responsible party and assumed Responsible Party status in accordance with §6213.4, may cease corrective action activities at the facility or site prior to complete remediation of the facility or site and incur no liability, other than liability pursuant to § 6213.5 provided the Voluntary Remediating Party:

- (a) Has not aggravated the site conditions or increased the costs of subsequent corrective action;
- (b) Gives written notice to the Director of the Voluntary Remediating Party's intention to cease activities at the facility or site; and
- (c) Stabilizes the facility or site by properly backfilling any excavations, properly securing or abandoning any monitoring wells; and takes any other actions required to secure the facility or site as determined by the Director.

6213.7 After completing remediation in accordance with the requirements of Chapter 62 a Voluntary Remediating Party may submit a written request for a no-further-action or a case closure letter as set forth in §6211. Upon the Director's approval, a Case Closure or a No-Further-Action letter, as appropriate, shall be issued to the responsible party with a copy to the Voluntary Remediating Party or to a Voluntary Remediating Party who has assumed responsible party status.

6213.8 The Director may issue the following types of letters under the circumstances described in this section:

- (a) A "Responsible Party Transfer Letter" which shall authorize a Voluntary Remediating Party to take corrective action in place of the responsible party and, at the request of the Voluntary Remediating Party, may release the responsible party from liability subject to the conditions in subsection 6213.5.
- (b) An "Innocent Neighboring Property Owner Letter" informing an innocent neighboring property owner that he or she may proceed to take corrective action under the direction of the Department without incurring responsible party liability.

- (c) A "Site Condition Letter" that informs an interested party of the present regulatory status of a particular LUST site or a neighboring property.
- (d) A "No Further Action" or a "Case Closure Letter" upon compliance with the requirements of § 6211.

6213.9 The Director may rescind any letter that is obtained through fraud or misrepresentation.

**CHAPTER 63 RIGHT OF ENTRY FOR INSPECTIONS MONITORING,
TESTING AND CORRECTIVE ACTION**

Secs.	
6300	Right of Entry
6301	Entries for Inspections and Monitoring
6302	Entry for Corrective Action

6300 RIGHT OF ENTRY

6300.1 The Director shall have the right, upon presentation of appropriate credentials to the owner, operator or agent in charge, to enter without delay on any property where an underground storage tank is or has been located, or on any property where contamination from an underground storage tank is suspected, for the purpose of enforcing the Act or this subtitle, as set forth in this section.

6300.2 Appropriate credentials for making an inspection shall include, but are not limited to, the following:

- (a) A duly issued photo identification card or badge showing the name of the inspector and his or her employment with the Department; or
- (b) Notice of inspection issued by the Director containing at least the following information:
 - (1) The name of the owner, operator, or agent in charge;
 - (2) The address to be inspected;
 - (3) The date of the inspection; and
 - (4) The signature of the inspector.

6300.3 Entry may be at any reasonable time with or without prior notice, as follows:

- (a) In emergency situations, which may include, situations where there is floating product on surface or ground-water, where there are ignition sources in the area, or where there is a potential immediate threat to public health or the environment, the Director shall have the right to enter at any hour; or

- (b) In non-emergency situations, entry between the hours of 9 a.m. and 5 p.m. on weekdays, as well as entry during any hours in which the owner or operator is open for business shall be deemed “reasonable.”

6301 ENTRIES FOR INSPECTIONS AND MONITORING

6301.1 Upon entry, the Director may do the following:

- (a) Inspect the premises where the tanks are or were located and surrounding areas which may be impacted;
- (b) Inspect and obtain samples of any regulated substance contained in any tank;
- (c) Inspect and copy any record, report, information or test result required to be maintained pursuant to the Act or this subtitle, or relevant to the operation of any underground storage tank; and
- (d) Conduct monitoring or testing of any tank, associated equipment, contents, surrounding soils, air, surface water, or ground-water.

6301.2 Samples shall be handled as follows:

- (a) If the Director obtains any sample, prior to leaving the premises, he or she shall give the owner, operator, or agent in charge, a receipt that describes the sample obtained, and if requested, a portion of the sample equal in volume or weight to the portion obtained. If any analysis is made of a sample, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge; and
- (b) All samples obtained by the Director shall be labeled at the time the sample is collected. All samples shall be accompanied by a “Chain of Custody Manifest Form” each time the sample changes hands or is moved from one location to another. Samples shall be handled in accordance with the Department’s Protocol.

6301.3 The Director may require the owner, operator or other responsible party to provide information or records, to conduct monitoring or testing, or take any necessary corrective action in accordance with the requirements of §5602 and Chapters 60 and 62.

6301.4 When requiring a the owner, operator or a responsible party to take action pursuant to the Act or this Subtitle, the Director may issue a field notice which shall advise the owner, operator or a responsible party of the action he or she is required to take and shall state the time period within which the action must be performed, or may take other enforcement actions pursuant to Chapter 66.

6301.5 The owner or operator of each UST system or another responsible party shall cooperate fully with inspections, monitoring, and testing conducted by the Director, as well as requests for document submission, testing, and monitoring by the owner, operator or responsible

party pursuant to §9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended (the “RCRA”), 42 USC §6901 *et seq.*

- 6301.6 Where the Director makes a written request for submission of records, documents or other information, required to be maintained by the owner, operator or another responsible party or in the possession of the owner, operator or another responsible party, the records or documents shall be submitted to the Director within twenty (20) days of a request, unless a different time period is specified by the Director. This subsection shall not affect the requirement for immediate production of records or documents during an inspection as provided for in §6301.1(c).

6302 ENTRY FOR CORRECTIVE ACTION

- 6302.1 The Director may enter upon property to perform, or cause to be performed, release response and corrective actions which are necessary to protect human health or the environment in any of the following circumstances, upon compliance with the notice requirements of this section:

- (a) Where no person can be found within ninety (90) days who is an owner or operator subject to the requirements of Chapter 62, and capable of proper implementation of the required corrective action;
- (b) Where a situation exists which requires immediate action by the Director to protect human health and the environment;
- (c) Where corrective action costs at a facility exceed the amount of coverage required by the Director pursuant to the financial responsibility requirements and action by the Director is necessary to ensure an effective corrective action; or
- (d) Where the responsible party has failed or refused to comply with an order issued by the Director requiring compliance with the corrective action rules.

- 6302.2 Except as provided in §6302.4, the Director shall provide written notice of his or her intention to enter the property to take corrective action, at least ten (10) working days prior to commencing work, and shall serve the notice in the following manner:

- (a) By personal delivery to the owner, operator or agent in charge employed by the owner or operator, or to a person of suitable age and discretion, over sixteen (16) years of age, residing or employed at the address of the owner or operator at the premises;
- (b) By registered mail, return receipt requested to the last known address of the owner or operator; or
- (c) If service cannot be effected as provided in paragraph (a) or (b) of this subsection, then service shall be effected as follows:

- (1) By publishing the notice once a week for three (3) weeks in a newspaper of general circulation in the District of Columbia, and
- (2) By conspicuous posting of the notice on the property.

6302.3 Where the owner or operator is a corporation, any notice to be served, if served on the president, treasurer, general manager, or any principal officer of such corporation in the manner provided in §6302.2, shall be deemed to have been served on the corporation. If the owner or operator is a foreign corporation, service on the registered agent of the corporation shall also be deemed service on the corporation.

6302.4 Where a release of a regulated substance from an underground storage tank creates an imminent threat to human health or the environment necessitating summary corrective action, and the emergency nature of the situation makes it impractical to give prior notice as provided in §6302.2, the Director may provide notice by conspicuous posting on the property at the earliest time feasible, prior to commencing work. Even if personal service or service by registered mail is effected, notice shall also be provided by posting.

6302.5 Except as provided in §6302.4, the written notice of intention to begin corrective action shall contain the following information:

- (a) The name and address of the owner of the property;
- (b) The name and address of the owner or operator or other responsible party to whom the notice is directed;
- (c) A statement of the authority pursuant to which the director is taking the corrective action;
- (d) A brief summary of the corrective actions to be taken and the conditions in need of correction;
- (e) A description of the location where work will take place, including both street address, and lot and square numbers or, where there are no lot and square numbers, the parcel number;
- (f) Notice of any applicable hearing rights to which the owner or operator is entitled under the Act or under Chapter 66, if such a notice has not already been served;
- (g) A statement that the Director will pursue cost recovery against the responsible party for all corrective action costs and related expenses;
- (h) The name, position, office address, and phone number of the employee issuing the notice and the name and phone number of the appropriate contact person within the Department; and

- (i) The signature of the Program Manager of the Underground Storage Tank Division, Environmental Health Administration, or other designated representative of the Director.

CHAPTER 64**DISTRICT OF COLUMBIA UST TRUST FUND,
DISTRICT INITIATED CORRECTIVE ACTIONS
AND COST RECOVERY**

Secs.	
6400	Establishment of Fund
6401	Fund Accounting
6402	Monies to be Deposited in UST Trust Fund
6403	Permissible Disbursements from the Fund
6404	Documentation of Fund Expenditures
6405	Site Prioritization for Fund Expenditures
6406	Recoverable Costs
6407	Cost Recovery Procedures

6400 ESTABLISHMENT OF FUND

6400.1 The Director shall maintain a separate and distinct fund within the District of Columbia Treasury, for the District of Columbia Underground Storage Tank Trust Fund (District UST Trust Fund or Fund) mandated by the Act.

6400.2 The Director shall designate the Controller of the Department to maintain the District UST Trust Fund in compliance with the Act and the District of Columbia Fund Account Act of 1980, D.C. Code §47-371.

6401 FUND ACCOUNTING

6401.1 The Controller of the Department shall act as treasurer of the District UST Trust Fund and shall do the following:

- (a) Ensure that all monies required to be deposited into the Fund under §6402 are in fact deposited into the Fund;
- (b) Manage all disbursements from the Fund;
- (c) Maintain records of all deposits into and disbursements from the Trust Fund;
- (d) Prepare financial statements for the Trust Fund at least annually in accordance with the established District Financial Management System (FMS) and generally accepted accounting principles;
- (e) Audit the UST Trust Fund at least once every two (2) years in accordance with 40 CFR §30.510(g); and
- (f) Maintain the Fund in compliance with the District Financial Management System, the requirements of this chapter and any applicable federal regulations.

6401.2 Obligations shall not be incurred against the District UST Trust Fund for any purpose by any employee of the Department without prior approval of the Program Manager of the Underground Storage Tank Division and the Controller.

6401.3 Documentation for expenditures from the Fund shall meet the requirements of §6404.

6402 MONIES TO BE DEPOSITED IN UST TRUST FUND

6402.1 All monies collected or received in tank registration fees, inspection fees, licensure or certification fees, or other tank fees shall be deposited in the District UST Trust Fund.

6402.2 All civil penalties and costs recovered from responsible parties shall be deposited in the District UST Trust Fund.

6402.3 Costs recovered from responsible parties after the expenditure of federal grant dollars for the Leaking Underground Storage Tank Program (Federal LUST Trust Monies), shall be deposited into the Fund as program income, but shall be accounted for in compliance with applicable federal law.

6402.4 Any grants or contributions received, or monies received as reimbursement for expenditures related to the Leaking Underground Storage Tank Program, shall be deposited in the District UST Trust Fund, except as provided in §6402.5.

6402.5 Federal LUST Trust Monies (which are drawn down pursuant to a cooperative agreement with EPA and replace the expenditure of District appropriated monies) shall be maintained separate and apart from the District UST Trust Fund.

6402.6 Any interest earned on monies in the District UST Trust Fund shall be credited to the Fund.

6402.7 If, at any time, the monies in the Fund shall reach the sum of three million dollars (\$3,000,000), collection of the annual registration fee from tank owners pursuant to §5601, shall be suspended until the non-obligated balance in the Fund falls to two million seven hundred fifty thousand dollars (\$2,750,000), at which time the fee shall be reinstated.

6402.8 All other monies required to be deposited into the Fund pursuant to this section, shall continue to be deposited in the Fund without limitation, and funds in excess of three million dollars (\$3,000,000) at the end of the fiscal year shall remain in the Fund.

6403 PERMISSIBLE DISBURSEMENTS FROM THE FUND

6403.1 The term corrective action, as used in this chapter, shall encompass any and all actions described in §§6202 through 6214 of this Subtitle, including but not limited to, preliminary investigations, initial response actions, initial abatement, free product removal, site assessment, site assessment plans, development and implementation of corrective action plans, remediation, monitoring, and well closure.

6403.2 The Director may undertake corrective action where there is a release of a regulated substance into the environment, and may disburse UST Trust Fund monies for this purpose if the action is necessary to protect human health or the environment, and one or more of the following exist:

- (a) No person can be found within ninety (90) days or a shorter period, as may be necessary to protect human health or the environment, who is:
 - (1) An owner or operator;
 - (2) Subject to the corrective action rules in Chapter 62 of this Subtitle; and
 - (3) Capable of proper implementation of the required corrective action; or
- (b) A situation exists that requires immediate action by the Director to protect human health and the environment; or
- (c) Corrective action costs at a facility exceed the amount of coverage required by the Director pursuant to Chapter 67 of this Subtitle and expenditures from the Fund are necessary to ensure an effective corrective action; or
- (d) The responsible party has failed or refused to comply with an order issued by the Director, an Administrative Law Judge, or other representative of the Mayor, that requires compliance with the corrective action rules.

6403.3 The Director may deem an action necessary to protect human health or the environment if any of the following conditions exist, or if a field investigation or site assessment is necessary to determine whether any of the following conditions exist:

- (a) There is an accumulation of toxic, flammable or explosive vapors in dwellings, sewers, or in the surrounding area;
- (b) There is floating free product on surface or ground water;
- (c) There is soil, ground-water or surface water contamination above the maximum level permitted under District regulations;
- (d) There is a spill or release of a regulated substance to the environment;
- (e) There is a danger of migration of the release into the surface waters, ground waters, soils or air of the District of Columbia;
- (f) The release poses a danger to plants or animals in the vicinity; or
- (g) The release poses a danger to public health.

6403.4 Except as provided in §6403.5, disbursements may be made from the Fund to pay for the following:

- (a) Costs of persons or companies performing corrective actions as defined in §6403.1;
- (b) Housing and relocation assistance for persons forced to relocate due to contamination from a LUST site;
- (c) Costs related to cost recovery and enforcement proceedings;
- (d) Provision of alternative water supplies;
- (e) Exposure assessments;
- (f) Costs of restoring property after assessment or remediation performed at the direction of UST Branch; and
- (g) Administrative and operational costs incurred in the day-to-day administration of the UST Program including personnel costs, equipment, contract costs, supplies, training and travel. The costs shall not exceed two hundred fifty thousand dollars (\$250,000) per year during the first three years that tanks are registered, after which a new “cap” shall be established by the Director.

6403.5 Disbursements of costs recovered from responsible parties (based upon the expenditure of Federal LUST Trust Monies) which are deposited into the Fund may be made only for “cost eligible activities” permitted under federal law and regulations.

6403.6 Disbursements from the Fund for corrective actions shall be made in accordance with the priority system set forth in §6405.

6403.7 Disbursements may be made to undertake corrective action where there is a release of a regulated substance as set forth in §6403.2.

6404 DOCUMENTATION OF FUND EXPENDITURES

6404.1 Disbursements of monies from the Fund shall be documented in accordance with the requirements of this section.

6404.2 The Director shall maintain original records, as are kept in the ordinary course of business, for all Fund expenditures.

6404.3 The Director shall maintain documentation that tracks the cost of cleanup and enforcement actions on a site-specific basis.

6404.4 Documentation of direct costs shall identify costs by activity.

6404.5 Any District agency contracting with or procuring services for the Director shall maintain and make available to the Director upon request, site-specific documentation of the following:

- (a) Time and attendance records including a description of employee activities, and fringe benefit calculations for all payroll expenses;
- (b) Copies of any advertisements, requests for proposals, proposals, contractor cost data, proposal evaluations, work change orders, reports on contractor work, audits of contractors, contracts, or other documents related to procurement of contractors to perform corrective actions;
- (c) Invoices, approval of invoices, and proof of payments for all contractor services;
- (d) Invoices, leases, proof of payment, receipts and, where feasible, hourly records of equipment use for any equipment leased or purchased;
- (e) Worksheets showing allocation of time to project and calculation of indirect costs;
- (f) Any authorizations, vouchers or receipts related to travel; and
- (g) Any other records kept in the normal course of accounting or required by federal regulation.

6404.6 Any contractor who performs corrective action work pursuant to a contract with the District, shall maintain records on a site-specific basis and shall bill the District for activities performed on a site-specific basis in accordance with District procurement regulations and policies.

6404.7 The Director shall maintain hard copies of all original cost documents for at least three(3) years from completion of the final expenditure report. If any litigation, audit or other action has been started before expiration of the three (3) year period, the records must be retained until completion of the action or resolution of all issues.

6405 SITE PRIORITIZATION FOR FUND EXPENDITURES

6405.1 The Director shall prioritize all eligible leaking underground storage tank (LUST) sites based on factors that include consideration of the following:

- (a) The danger of fire or explosion;
- (b) The danger of toxic vapors;
- (c) The environmental setting of the site including proximity to potable water supply, ground water or surface waters which may be impacted;

- (d) The present and future uses of the affected aquifer or surface waters;
- (e) The potential for migration off-site;
- (f) The type of contaminant;
- (g) The size of the release (number of gallons of regulated substance lost);
- (h) Whether the leak is continuing or has been contained;
- (i) Whether publicly owned lands are impacted;
- (j) The degree to which human health, safety, or welfare may be affected by exposure to the contamination;
- (k) The size of the population or area affected by the contamination; and
- (l) The time that has elapsed since the release was detected.

6405.2 The priority list of sites shall be based on an ordering of scored sites that the highest scored site(s) will be of highest priority for response action and the lowest scored site will be of lowest priority for response action.

6405.3 The Director may adjust the priority list as necessary based upon changing environmental conditions, public health needs, cost effectiveness, efficiency, and available resources.

6405.4 Regardless of the position of a site on the priority list, the Director may initiate emergency action for those sites that, in the judgment of the Director, present an imminent hazard to human health and safety or where failure to prevent migration of a regulated substance would cause irreversible damage to the environment. Site classification pursuant to § 6206 shall be completed to evaluate the need for additional assessment or development of a corrective action plan.

6406 RECOVERABLE COSTS

6406.1 Whenever District of Columbia UST Trust Fund monies or Federal LUST Trust Monies are expended, for undertaking corrective or enforcement action with respect to the release of a regulated substance from an underground storage tank, the responsible party or parties shall be jointly and severally liable to the District government for the costs.

6406.2 Recoverable costs shall include the following:

- (a) All costs related to identification and notification of owners, operators and other responsible parties, and enforcement actions against a responsible party;
- (b) All costs related to investigation, assessment, cleanup, and monitoring of sites;

- (c) Indirect costs incurred by the District based upon the formula negotiated annually with the appropriate federal agency;
- (d) All expenditures reasonably related to inducing a recalcitrant responsible party to comply and to recovering cleanup expenditures including salaries and other expenses associated with case development, negotiations and litigation;
- (e) Expenditures related to oversight of responsible party cleanups;
- (f) Legal costs associated with protracted negotiations, issuance of cleanup orders and litigation to compel reluctant responsible parties to clean up or pay clean-up costs; and
- (g) Interest at the rate of six percent (6%) per annum.

6407 COST RECOVERY PROCEDURES

- 6407.1 The Director shall issue a “demand letter” requesting payment in the amount of all costs incurred by the Director plus any applicable interest, after completion of corrective action and prior to bringing a judicial action for recovery of costs. In his or her discretion, the Director may also issue interim demand letters prior to completion of corrective action.
- 6407.2 The demand letter shall include the following information:
- (a) The total amount due;
 - (b) An itemization of costs included in the total amount claimed;
 - (c) A statement of the time within which payment must be made;
 - (d) The interest rate;
 - (e) Notice that if the responsible party fails to pay within the prescribed time period, court action will be instituted, the costs may be assessed as a tax against the property and that the responsible party will be liable for costs of legal action; and
 - (f) Notice that where federal funds have been utilized, the responsible party is also liable to the federal government.
- 6407.3 The demand letter shall be mailed to the responsible party postage prepaid at the last known address for the responsible party.

- 6407.4 Thirty-three (33) days after the demand letter has been postmarked, the Director may do the following:
- (a) Institute court action;
 - (b) Refer the case to the Department of Finance and Revenue for imposition of a tax lien; or
 - (c) Take any other collection measures deemed appropriate.
- 6407.5 Where there is more than one responsible party who may be held liable for corrective action costs, the Director may pursue one (1) or more responsible parties in his or her discretion, and in doing so, may consider the relative responsibility of the responsible parties for the contamination.
- 6407.6 The Director shall pursue in a timely manner and give high priority to cases where there is a solvent responsible party who refuses to comply with corrective action orders, or is otherwise recalcitrant, and cases in which the owner or operator fails to comply with the financial responsibility requirements.
- 6407.7 When a case is referred to the Department of Finance and Revenue pursuant to §6407.4(b) and §6(g) of the Act, the costs of correction of the condition and related expenses as set forth in §6406.2, shall be assessed as a tax against the property, and collected in the same manner as real estate taxes are collected. Notice to taxpayers, payment of taxes and sale of properties for payment of delinquent taxes, shall be in accordance with the applicable provisions of DCMR Title 9, Chapter 3, titled “Real Property Taxes.”

**CHAPTER 65 LICENSING AND CERTIFICATION OF TANK INSTALLERS,
REMOVERS, TESTERS AND OPERATORS**

Secs.	
6500	General Provisions
6501	Certification Procedures

6500 GENERAL PROVISIONS

- 6500.1 The owner or operator of each UST system shall ensure that the UST system or any component of the UST system, including the release detection system, is installed under the continuous on-site supervision of a UST System Technician who is certified in accordance with the provisions of this chapter and who is licensed to do business in the District of Columbia.
- 6500.2 The owner or operator of each UST system that is to be permanently closed or that the type of service will change shall ensure that the UST system is abandoned or removed under the continuous on-site supervision of a UST System Technician or UST Closer Specialist who is certified in accordance with the provisions of this chapter and who is licensed to do business in the District of Columbia.
- 6500.3 The owner or operator of each UST system to be tested for tightness shall ensure that the test is conducted under the continuous on-site supervision of a UST System Tester who is certified in accordance with the provisions of this chapter and licensed to do business in the District of Columbia.
- 6500.4 Each business that provides services for UST system installation, upgrade, retrofit, repair or permanent closure in the District of Columbia shall be certified to perform UST activities by the Director in accordance with the provisions of this chapter and licensed to do business in the District of Columbia. A business may be certified to perform only those UST activities for which it employs a UST System Technician, UST Closer Specialist, UST System Tester who has a current valid District of Columbia certification and license for the applicable UST activity or an equivalent category.
- 6500.5 Each person who provides his or her services for UST system installation, upgrade, retrofit, repair, or permanent closure in the District of Columbia shall be certified to perform UST system activities by the Director in accordance with the provisions of this chapter and licensed to do business in the District of Columbia.
- 6500.6 Each business that is certified to perform UST system activities in the District of Columbia shall provide the Director with a list of employees, who are not certified as UST System Technicians, Closer Specialists or Testers, but who perform supervised on-site UST activities.

6500.7 Each certified UST System Technician, Closure Specialist and Tester shall carry the identification card or the certificate issued by the Director at all times while conducting the applicable UST activity. The identification card shall be available for inspection by the owner, operator or the Director when the technician, specialist or tester is engaged in the UST activity for which he or she is certified.

6500.8 No business may transfer the UST System certification or license issued to it by the District of Columbia.

6500.9 Within ten (10) business days after close or termination of the business, the licensee shall surrender the certification and license to the Director for cancellation.

6501 CERTIFICATION PROCEDURES

6501.1 The Director shall certify to perform UST System activities as set forth in §6500 in the District of Columbia, any individuals who satisfy the following requirements:

- (a) Show evidence of having satisfactory completion of a recognized training program in the UST System activity(ies) for which the applicant seeks certification;
- (b) Submission of a completed application and payment of the application fee of \$200.00 in the form of a check made payable to the D.C. Treasurer;
- (c) Possess a current OSHA certification; and
- (d) Satisfactory completion of a test upon their knowledge in the technical area in which they seek certification as well as the District's statutes and regulations pertaining to USTs.

6501.2 The Director shall certify to perform UST System activities as set forth in §6500, businesses that wish to perform UST System activities in the District of Columbia, provided they satisfy the following requirements:

- (a) Submission of a completed application and payment of the application fee of \$350.00 in the form of a check made payable to the D.C. Treasurer;
- (b) Demonstrate, to the satisfaction of the Director, that the business is qualified to perform the UST System activities for which it seeks certification;
- (c) Demonstrate, to the satisfaction of the Director, that the business employs at least one individual who has expertise and is certified in the District in each of the UST System activities the business will offer;
- (d) Possess a current OSHA certification; and

- (e) Possess a valid, current District of Columbia business license for the business in which certification is sought.

6501.3 The Director may recognize individuals or businesses that are certified by neighboring states and so certify, to perform UST System activities as set forth in § 6500, individuals or businesses that satisfy the requirements of this section:

- (a) Possess a current valid certification as a UST System Technician, Closer Specialist or Tester, or an equivalent certification category as determined by the Director, issued by either of the states of Virginia West Virginia, Maryland, Delaware, or Pennsylvania;
- (b) Is currently in good standing in each of the states, named in §6501.3(a), for which it holds a certification;
- (c) Possess a current OSHA certification;
- (d) Possess a valid, current District of Columbia business license for the business in which certification is sought;
- (e) Demonstrate, to the satisfaction of the Director, a knowledge of the provisions of this Subtitle; and
- (f) Submits a completed application form and pays an application fee of \$150.00 for individuals or \$250 for businesses.

6501.4 An applicant certified in one of the states in §6501.3(a) may be tested by the Director to verify the knowledge of the provisions of his subtitle or shall submit the following documents or information with the application for certification:

- (a) A letter or statement from the state official or office in which the individual or business is currently certified stating that the individual or business is currently in good standing in that state;
- (b) A list of additional states in which the individual or business is certified and/or licensed as a UST System Technician, Closer Specialist or Tester, or an equivalent certification category;
- (c) A copy of the current OSHA certification;
- (d) A copy of a valid, current District of Columbia business license for the business in which certification is sought; and
- (e) Submission of an application fee of \$100 for individual or \$250 for business by check or money order made payable to the D.C. Treasurer.

- (f) Evidence of possession of the District of Columbia UST regulation and its amendments

6501.5 An applicant who relies upon an out-of-state certification may only be certified in the same UST System activity, as determined by the Director, in which the out-of-state certification was received.

6501.6 The certification issued by the Director shall be valid for no more than one (1) year from date of issue. The Certification may be renewed one time for an additional one-year period for a fee of \$100 for individuals or \$150 for businesses upon presentation of the expiring certification.

CHAPTER 66**ENFORCEMENT PROCEDURES**

Secs.	
6600	Jurisdiction and Delegation of Authority
6601	Notice of Violation or Threatened Violation
6602	Proposed Compliance Order or Proposed Cease and Desist Order
6603	Notice of Suspension, Revocation or Denial of a License or Certification
6604	Settlement Agreements and Consent Compliance Orders
6605	Hearings and Issuance of Final Order
6606	Immediate Compliance Orders, Immediate Cease and Desist orders
6607	Summary Suspension or Restriction of License or Certification
6608	Penalties
6609	Appeals
6610	Civil Infractions
6611	Court Action in lieu of Compliance Order or Cease and Desist Order

6600 JURISDICTION AND DELEGATION OF AUTHORITY

- 6600.1 In every case in which a hearing is requested or is required pursuant to the Act or pursuant to this Subtitle, the hearing authority of the Director is delegated to the authorized hearing body(ies) for the Department which shall have jurisdiction to hear and render a final decision in the case.
- 6600.2 The contested case provisions of the D.C. Administrative Procedures Act, D.C. Code Section 1-1509, as supplemented by this chapter shall govern all cases in which a hearing is requested or otherwise required by the Act or this Subtitle.
- 6600.3 The Director or his or her designee, shall be authorized to pursue enforcement actions through:
- (a) The issuance of notices of violation pursuant to §6601, proposed compliance orders and proposed cease and desist orders pursuant to §6602, and notices of intention to suspend, deny or revoke a license or certification pursuant to §6603;
 - (b) The development and presentation of cases before an authorized hearing body; and
 - (c) The issuance of immediate cease and desist orders and compliance orders pursuant to §6606.
- 6600.4 The Director or his or her designee shall be authorized to issue summary suspension orders pursuant to §6607.

6601 NOTICE OF VIOLATION OR THREATENED VIOLATION

- 6601.1 Any enforcement action under the Act or pursuant to this Subtitle shall be commenced with a written notice of violation or threatened violation issued to any person deemed appropriate by the Director, except as provided in §§6603 and 6606.2.

- 6601.2 The notice of violation or threatened violation shall:
- (a) Clearly identify the violation or threatened violation by citing the specific regulations(s);
 - (b) May require the Respondent (as defined in § 7099.1) to take the corrective measures the Director considers reasonable and necessary; and
 - (c) If corrective measures are required, shall allow a reasonable time for performance of necessary corrective measures, consistent with the likelihood for harm and the need to protect health, safety, life, property and the environment.
- 6601.3 A notice of violation or threatened violation shall be served by personal service on a Respondent or his or her authorized agent or by certified mail, return receipt requested. If the person fails or refuses to accept certified mail, the notice of violation or threatened violation may be served by regular first class mail; provided that:
- (a) The notice of violation is sent to the last known address of the person being served or if applicable, the address(es) on a notification form or other official correspondence submitted to the Department; and
 - (b) The accuracy of the address is verified.
- 6601.5 If a Respondent objects to a notice of violation or threatened notice of violation on the grounds that the action directed, is not necessary or appropriate from a technical, engineering, geophysical, or other scientific perspective, the Respondent shall file a written statement including the grounds for his or her objection within fifteen (15) calendar days of service of the notice, or any other longer time period as the Director may specify.
- 6602 PROPOSED COMPLIANCE ORDER OR PROPOSED CEASE AND DESIST ORDER**
- 6602.1 If the Respondent upon whom a notice of violation or threatened violation has been served, fails to comply with the corrective measures required in the notice, the Director or his or her designee, may issue a proposed compliance order or a proposed cease and desist order to the Respondent.
- 6602.2 A proposed compliance order or proposed cease and desist order shall:
- (a) Include a statement of the facts, the nature of alleged violations including citation of the specific regulation(s) involved, and the legal grounds for relief;
 - (b) Allow a reasonable time for compliance with the order consistent with the likelihood for harm and the need to protect health, safety, life, property, and the environment;

- (c) Advise the Respondent that he or she has a right to a hearing and to legal representation;
- (d) Inform the Respondent of any scheduled hearing date or the actions which the Respondent must take to obtain a hearing and the consequences of failure to comply with the proposed order or request a hearing;
- (e) Set forth the action or actions which the Respondent must take or the activity or activities which the Respondent must cease in order to comply with the order; and
- (f) State the amount of any penalties to be assessed for failure to comply with the order.

6602.3 A proposed compliance order, proposed cease and desist order, a summons or accompanying instructions shall be served by one of the following methods:

- (a) Personal service on the named Respondent or the Respondent's authorized agent for service;
- (b) Delivering to the last known home or business address of the named Respondent and leaving it with a person over the age of eighteen (18) years residing or employed therein; or
- (c) Mailing, via United States Postal Service first class, certified, postage prepaid to the last known home or business address of the named Respondent or the Respondent's agent; or
- (d) Any other means set forth in D.C. Law 8-242.

6602.4 A proposed compliance order, proposed cease and desist order, a summons or accompanying instructions shall state whether the Respondent is required to file an answer thereto, the time within which to respond, and the form of response required.

6603 NOTICE OF SUSPENSION, REVOCATION OR DENIAL OF A LICENSE OR CERTIFICATION

6603.1 An action to suspend, revoke, or refuse to issue, renew, or restore a license or certification provided for in §7(a) of the Act and Chapter 65 of this Subtitle shall be initiated by a notice of proposed suspension, revocation or denial in accordance with this section in lieu of a notice of violation pursuant to §6601.

6603.2 The notice of proposed suspension, revocation or denial shall be in writing and shall include the following:

- (a) The name and address of the applicant for or holder of the license or certification;
- (b) A statement of the proposed action;

- (c) A statement of the reasons for the proposed action in compliance with the requirements of §8 of the Act; and
- (d) Notice that the Respondent has a right to a hearing at the time and place stated, and is required to file an answer.

6604 SETTLEMENT AGREEMENTS AND CONSENT COMPLIANCE ORDERS

- 6604.1 At any time during the course of the proceedings, the parties to the proceeding may enter into a settlement agreement or consent compliance order. A settlement agreement or consent compliance order shall set forth each of the agreements made, actions to be taken by either party and any agreed-upon fines or penalties and shall indicate that the agreement may not be appealed.
- 6604.2 A settlement agreement shall be effective when signed by the parties thereto and shall not require the signature of an Administrative Law Judge (ALJ).
- 6604.3 A settlement agreement may be submitted to an ALJ for approval.
- 6604.4 A consent compliance order shall be effective when signed by the parties to the case and by an ALJ, and shall have the force and effect of any final order. There shall be no right of appeal from a consent compliance order.

6605 HEARINGS AND ISSUANCE OF FINAL ORDER

- 6605.1 Once a hearing is requested, motions practice, pre-hearing discovery, and the conduct of the hearing shall be in accordance with the D.C. Administrative Procedures Act and Department hearing procedures.
- 6605.2 The Petitioner (as defined in § 7099.1) shall have the burden of going forward with and of proving that the violation occurred as set forth in the proposed compliance or cease and desist order, and that the proposed civil penalty, revocation or suspension, as the case may be, is appropriate.
- 6605.3 Following the establishment of a *prima facie* case, the Respondent shall have the burden of presenting and of going forward with any defense to the allegations set forth in the petition. Each matter of controversy shall be determined by the ALJ upon a preponderance of the evidence.
- 6605.4 If a Respondent does not appear for the scheduled hearing, and no continuance has been granted, the ALJ may receive evidence and hear testimony and may render a decision on the basis of evidence before it.
- 6605.5 The ALJ shall inform the parties of an action taken under this section.

6605.6 A decision of the ALJ shall be supported by and in accordance with substantial, reliable, and probative evidence pursuant to D.C. Code §1-1509(e) (1992 Repl. Vol.).

6605.7 The ALJ's decision and order shall include findings of fact and conclusions of law.

6605.8 A final compliance order shall also set forth the following:

(a) The action or actions which must be taken by the Respondent to correct a violation or threatened violation of the Act or regulations issued under the Act, and may include the following:

(1) Perform testing, studies, investigations, monitoring;

(2) Perform comprehensive site assessment;

(3) Upgrade tanks, remove tanks, install leak detection systems, repair or replace tank systems, close tanks;

(4) Prepare corrective action plans;

(5) Implement remediation or corrective action plan; or

(6) Maintain and submit records.

(b) The amount of any civil penalties to be imposed, as authorized by §§10(d) through (g) of the Act;

(c) Authorization for the Director to enter on property to undertake assessment and corrective action, if the Respondent fails or refuses to comply with an order requiring the Respondent to perform a site assessment or corrective action within the time period set forth in the order; and

(d) Any applicable appeal rights.

6605.9 A final order suspending, revoking or denying a license or certification shall state clearly the action taken the reasons for the action, and any applicable appeal rights.

6606 IMMEDIATE COMPLIANCE ORDERS, IMMEDIATE CEASE AND DESIST ORDERS

6606.1 The Director, or his or her designee, may issue an immediate compliance order or an immediate cease and desist order to require a person to correct a situation which immediately threatens health or the environment or to restrain any person from engaging in any unauthorized activity that immediately endangers or causes damage to public health or the environment.

- 6606.2 When an immediate compliance order, or immediate cease and desist order, is authorized under this section, it shall not be necessary to first issue a notice of violation or proposed compliance order pursuant to §6601 or 6602 or to provide reasonable notice and an opportunity for a hearing pursuant to §6602.
- 6606.3 An immediate compliance order or immediate cease and desist order issued pursuant to this section shall be served in the same manner as a proposed compliance order or proposed cease and desist order is served pursuant to §6602.4.
- 6606.4 An immediate compliance order or immediate cease and desist order shall:
- (a) Include a statement of the nature of the situation or violation;
 - (b) Take effect at the time and on the date signed;
 - (c) Identify the action or actions to be taken or ceased; and
 - (d) Include a statement advising the Respondent that he or she has a right to request a hearing before an ALJ within the OAD within seventy-two (72) hours of service of the order upon him or her, and that if a hearing is not requested within that time period, the order will become final.
- 6606.5 A hearing request shall not stay the effective date of the order.
- 6606.6 If a hearing is requested, the hearing shall be held within fifteen (15) days from the date that the hearing request is received by OAD and the ALJ shall issue a decision, including findings of fact and conclusions of law, no later than fifteen (15) days after the hearing.
- 6606.7 Any situation or activity, related to underground storage tanks regulated by this Subtitle, that are conducted in violation of these regulations or that endangers or causes damage to public health or the environment may warrant issuance of an immediate cease and desist order, including but not limited to:
- (a) An accumulation of toxic, flammable or explosive vapors in a structure, sewer or excavation;
 - (b) Floating free product on surface or ground water;
 - (c) Potential for migration of release to surface waters or other sensitive environmental receptors;
 - (d) An open pit or excavation that is not secured properly during or left in place after corrective action; or
 - (e) Potential exposure of humans, plants or animals to hazardous substances.

6607 SUMMARY SUSPENSION OR RESTRICTION OF LICENSE OR CERTIFICATION

- 6607.1 If the Director, determines during or after an investigation, that the conduct of any business or individual who installs, removes, or tests an underground storage tank presents an imminent danger to the health or safety of the residents of the District, the Director or designee may summarily suspend or restrict the license of the business or the certificate of the individual, without a hearing.
- 6607.2 At the time of the summary suspension or restriction, the Director shall provide the licensee or certificate holder with a written notice stating the action that is being taken, the basis for the action, and the right to request a hearing within seventy-two (72) hours after service of the notice.
- 6607.3 The notice shall be served in the same manner as a proposed compliance order pursuant to §6602.4.
- 6607.4 If a hearing is timely requested, the hearing shall be held before an ALJ of the OAD within fifteen (15) days of the request and a decision shall be issued within fifteen (15) days after the hearing.

6608 PENALTIES

- 6608.1 Penalties for failure to comply with a final compliance order, a final cease and desist order, or a final suspension, revocation or denial order shall be in accordance with §§10 (d) through 10(g) of the Act.

6609 APPEALS

- 6609.1 Any person adversely affected or aggrieved by a final compliance order, cease and desist order or other administrative order issued pursuant to this chapter and §10 of the Act may appeal the action by filing a petition for review in the D.C. Court of Appeals.
- 6609.2 The appeal shall be filed in conformity with the rules of the District of Columbia Court of Appeals.
- 6609.3 The filing of a petition for review shall not in itself stay enforcement of the final order or decision.

6610 CIVIL INFRACTIONS

- 6610.1 In any instance where a civil fine, penalty or fee has been established pursuant to the “Civil Infractions Act” (D.C. Law 6-42, D.C. Code §6-2701 *et seq.*) and the "Civil Infractions Regulations" (1 DCMR §11) promulgated pursuant thereto, the civil fine, penalty or fee may be imposed as an alternative sanction to the penalties set forth in §§10(d) through 10(f) of the Act.
- 6610.2 Where civil infraction fines are the only penalties pursued in a particular case, the Civil Infractions Regulations shall govern the proceedings in lieu of Departmental hearing procedures or Chapter 66 Enforcement Procedures.
- 6610.3 A civil infractions case may be consolidated for hearing together with another case against the same responsible party in which a proposed compliance order or proposed cease and desist order has been issued.

6611 COURT ACTION IN LIEU OF COMPLIANCE ORDER OR CEASE AND DESIST ORDER

- 6611.1 After a notice of violation has been issued and the time for compliance has expired, the Director, in his or her discretion, may, institute a court action for injunctive relief, damages, civil penalties, or recovery of any corrective action costs incurred by the District government pursuant to §10(b) of the Act, in lieu of proceeding through the administrative process to issue a proposed compliance order or proposed cease and desist order.
- 6611.2 In order to require a person to correct a situation which immediately threatens health or the environment or to restrain any person from engaging in any unauthorized activity that immediately endangers or causes damage to public health or the environment, the Director may, in his or her discretion, seek a temporary restraining order in court in lieu of seeking an immediate compliance order or cease and desist order.

CHAPTER 67**FINANCIAL RESPONSIBILITY**

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6700 PETROLEUM UST SYSTEMS

- 6700.1 The provisions of this chapter shall apply to all owners and operators of petroleum underground storage tank (UST) systems, except as otherwise provided in this section.
- 6700.2 State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States or the District of Columbia government are exempt from the requirements of this section.
- 6700.3 The requirements of this chapter do not apply to owners or operators of any UST system described in §5501.3, 5502.1 or 5503.
- 6700.4 If the owner and operator of a petroleum underground storage tank are separate persons, only the owner shall be required to demonstrate financial responsibility; however, both the owner and operator shall be liable for noncompliance.
- 6700.5 An owner shall not be required to maintain financial responsibility under this section for an UST system after the UST system has been properly closed, in accordance with Chapter 61.

- 6700.6 If corrective action is required before an UST or UST system is closed, the corrective action shall be completed in accordance with the applicable requirements of Chapter 62. After corrective action has been completed and the tank has been properly closed in accordance with Chapter 61, the owner shall no longer be required to demonstrate financial responsibility.
- 6700.7 The amounts of demonstrated financial responsibility assurance required under this section shall not include legal defense costs.
- 6700.8 The owner of one or more existing petroleum UST(s), who has not previously filed a Certification of Financial Responsibility with the Director, shall immediately file such a Certification of Financial Responsibility as described in §6702.7, since all UST owners have been required to comply with the federal financial responsibility requirements since December 31, 1993, or earlier.
- 6700.9 Within thirty (30) days after installation of a new UST, the owner of the petroleum UST shall file with the Director a Certification of Financial Responsibility as described in §6702.7.
- 6700.10 The owner of a petroleum UST system shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in the per-occurrence amount of at least one million dollars (\$1,000,000):
- (a) For a petroleum UST that is located at a petroleum marketing facility; and
 - (b) For a petroleum UST that handles an average of more than ten thousand (10,000) gallons of petroleum per month based on annual throughput for the previous calendar year.
- 6700.11 The owner of a petroleum UST system not covered under §6700.10 shall demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum UST systems in the per-occurrence amount of five hundred thousand dollars (\$500,000).
- 6700.12 The owner of each petroleum UST shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:
- (a) The owner of one (1) to one hundred (100) petroleum UST's shall demonstrate financial responsibility in the amount of one million dollars (\$1,000,000); and
 - (b) The owner of one-hundred-one (101) or more petroleum UST's shall demonstrate financial responsibility in the amount of two million dollars (\$2,000,000).

- 6700.13 For the purposes of §6700.12 and §6700.16 only, the term “petroleum UST” means a single containment unit and does not mean combinations of single containment units.
- 6700.14 Except as provided in §6700.15 of this section, if an owner uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility (for example, self-insurance for taking corrective action, liability insurance for compensating third parties for bodily injury and property damage caused by sudden accidental releases, and a separate policy of insurance for compensating third parties for bodily injury and property damage caused by non-sudden accidental releases), the amount of assurance provided by each separate mechanism or combination of mechanisms used for each purpose shall be in the full amount specified in §§6700.10, 6700.11 and 6700.12 of this section.
- 6700.15 If an owner uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different UST’s, the annual aggregate amount required under §6700.12 shall be based on the number of tanks covered by each separate mechanism or separate combination of mechanisms.
- 6700.16 Owners shall review the amount of aggregate assurance provided whenever one (1) or more additional petroleum UST’s are acquired or installed. If, after review, the number of petroleum UST’s for which financial responsibility must be demonstrated exceeds one hundred (100), the owner shall comply with the requirements of §6700.12(b) of this section (at least two million dollars (\$2,000,000) annual aggregate) by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If financial responsibility is being demonstrated by a combination of mechanisms, the owner shall demonstrate financial responsibility in the amount of at least two million dollars (\$2,000,000) of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.
- 6700.17 The per-occurrence and annual aggregate coverage amounts required under this section shall not in any way limit the liability of the owner or operator.

6701 FINANCIAL RESPONSIBILITY MECHANISMS

- 6701.1 Subject to the limitations of §§6701.2 and 6701.3 of this section, the owner of a petroleum UST system may use any single mechanism or combination of mechanisms listed in §§6703 through 6711 to demonstrate financial responsibility under this chapter for one (1) or more UST’s.

- 6701.2 An owner may use a guarantee or surety bond to establish financial responsibility only if the Corporation Counsel of the District of Columbia has submitted a written statement to the Director that the guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in the District of Columbia.
- 6701.3 An owner may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under §§6703 through 6705, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.
- 6701.4 Subject to the requirements of §§6701.5 and 6701.6, an owner may substitute any alternate financial assurance mechanism or combination of mechanisms specified in §§6703 through 6710 for a financial assurance mechanism currently in place.
- 6701.5 If an owner substitutes an alternate financial mechanism, the owner shall maintain the existing financial assurance mechanism or combination of mechanisms in effect, in compliance with the requirements of §6700, at all times until the transition to the alternative mechanism or mechanisms is completed.
- 6701.6 After obtaining alternate financial assurance that complies with the requirements of §6700, an owner may cancel an existing financial assurance mechanism by providing notice to the provider of financial assurance.
- 6701.7 An owner shall obtain alternate assurance of financial responsibility within thirty (30) days after the owner receives notice of any of the following:
- (a) Commencement of a voluntary or involuntary proceeding under Title 11 of the United States Code (Bankruptcy), naming a provider of financial assurance as a debtor;
 - (b) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;
 - (c) Failure of a guarantor to meet the requirements of the financial test required under this chapter; or
 - (d) Any other incapacity of a provider of financial assurance.

6702 RECORDS AND REPORTS

- 6702.1 Each owner shall maintain a copy of each financial assurance mechanism used to demonstrate financial responsibility under §§6703 through 6711 of this chapter for each underground storage tank until released from the requirements of this chapter under §§6700.5 or 6700.6.

- 6702.2 An owner may maintain the documentary evidence required under §6702.1 at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site shall be made available to the Director upon request.
- 6702.3 Each owner using an assurance mechanism specified in §§6703 through 6710 shall maintain a copy of the appropriate assurance instrument in the form prescribed by the Director.
- 6702.4 Each owner using a financial test of self-insurance or guarantee shall maintain a copy of the chief financial officer's letter of assurance based on year-end financial statements for the most recent completed financial reporting year. This letter shall be on file not later than one hundred twenty (120) days after the close of the owner's financial reporting year.
- 6702.5 An owner using a guarantee, surety bond, or letter of credit shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
- 6702.6 An owner using an insurance policy or risk retention group coverage shall maintain a copy or the signed insurance policy or risk retention group coverage policy, along with the endorsement or certificate of insurance and any amendments to the agreements.
- 6702.7 An owner using an assurance mechanism specified in §§6703 through 6710 shall maintain a copy of a certification of financial responsibility, in the form prescribed in Appendix 67-1 of this chapter and shall file the form with the Director as required under §6700.8. The form shall be updated whenever there is a change in a financial assurance mechanism used to demonstrate financial responsibility.
- 6702.8 An owner shall submit current evidence of financial responsibility to the Director within thirty (30) days after the owner identifies a release from an underground storage tank required to be reported under §6201 or 6204 of this subtitle.
- 6702.9 An owner shall submit current evidence of financial responsibility to the Director within thirty (30) days after the owner or operator receives notice of the incapacity of a provider of assurance under §6701.7 of this chapter.
- 6702.10 An owner shall certify compliance with the financial responsibility requirements of this chapter as specified in the new tank notification form, when notifying the Director of the installation of a new underground storage tank under the provisions of §5600 of this subtitle.
- 6702.11 The Director may require an owner to submit evidence of financial assurance or any other information relevant to compliance with the provisions of §§6703 through 6711 of this chapter at any time.

6703 FINANCIAL TEST OF SELF-INSURANCE

- 6703.1 An owner, or a guarantor, or both (also written in abbreviated form as “owner/guarantor” in this chapter) may satisfy the requirements of §6700 by passing either of the financial tests set forth in this section.
- 6703.2 To pass a financial test of self-insurance, the owner/guarantor shall meet either of the following, based on year-end financial statements for the latest completed fiscal year:
- (a) The criteria of Test A, as set forth in §6704; or
 - (b) The criteria of Test B, as set forth in §6705.
- 6703.3 To demonstrate that the owner/guarantor meets the financial test under §6703.2(a) or (b), the chief financial officer of the owner/guarantor shall sign, within one hundred twenty (120) days of the close of each financial reporting year, as defined by the twelve (12) month period for which financial statements used support the financial test are prepared, a letter of assurance in the form specified in Appendix 67-2 to this chapter.
- 6703.4 If an owner finds that he or she no longer meets the requirements of the financial test set forth in §6704 or 6705 based on year-end financial statements, the owner shall obtain alternative coverage within one hundred fifty (150) days after the end of the year for which the financial statements used were prepared.
- 6703.5 The Director may require reports of financial condition at any time from the owner/guarantor. If the Director finds, on the basis of any report or other information, that the owner/guarantor no longer meets the financial test requirements of this section, the owner shall be required to obtain alternate coverage within thirty (30) days after notification by the Director of the finding.
- 6703.6 If an owner fails to obtain alternate assurance within one hundred fifty (150) days, as required by §6703.4, or within thirty (30) days of notification by the Director under §6703.5, the owner shall notify the Director of the failure within ten (10) days.

6704 FINANCIAL TEST OF SELF-INSURANCE: TEST A

- 6704.1 In order to meet financial Test A, the owner/guarantor shall have a tangible net worth of at least ten (10) times the aggregate total of the following:
- (a) The total of the applicable aggregate amount required by §6700, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the Director;
 - (b) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and the amount of liability coverage for which a financial test is used to demonstrate financial responsibility to the Director; and

- (c) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to the Director.

6704.2 Under Test A, the owner/guarantor shall have a tangible net worth of at least ten million dollars (\$10,000,000).

6704.3 Under Test A, the owner/guarantor shall have a letter of assurance signed by the chief financial officer in the form specified in Appendix 67-2 (Alternative I) to this chapter.

6704.4 Under Test A, the owner/guarantor's year-end financial statements, if independently audited, may not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

6704.5 Under Test A, the owner/guarantor, annually shall do either of the following:

- (a) File financial statements with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or
- (b) Report the firm's tangible net worth to Dun and Bradstreet. Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

6705 FINANCIAL TEST OF SELF-INSURANCE: TEST B

6705.1 In order to meet financial Test B, the owner/guarantor shall meet the federal financial test requirements set forth in Title 40 of the *Code of Federal Regulations* (40 CFR §264.147(f)(1)), substituting the appropriate amount specified in §6700.12(a) or (b) for the "amount of liability coverage" each time specified in that section of the federal regulations.

6705.2 Under Test B, the fiscal year-end financial statements of the owner/guarantor shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

6705.3 Under Test B, the owner/guarantor's year-end financial statements may not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

6705.4 Under Test B, the owner/guarantor shall have a letter of assurance signed by the chief financial officer in the form specified in Appendix 67-2 (Alternative II) to this chapter.

6705.5 Under Test B, if the financial statements of the owner/guarantor are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration, the owner/operator/guarantor shall obtain a special report by an independent certified public accountant ("CPA") stating the following:

- (a) The CPA has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner/guarantor, with the amounts in the financial statements; and

- (b) In connection with that comparison, no matters came to the attention of the CPA which caused him or her to believe that the specified data should be adjusted.

6706 GUARANTEES

- 6706.1 An owner may satisfy the requirements of §6700 of this chapter by obtaining a guarantee that conforms to the requirements of this section.
- 6706.2 The guarantor shall be a firm that meets one (1) of the following criteria:
- (a) It has a controlling interest in the owner;
 - (b) It has a controlling interest in a firm that has a controlling interest in the owner;
 - (c) It is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner; or
 - (d) It is engaged in a substantial business relationship with the owner and issues the guarantee as an act incident to that business relationship.
- 6706.3 Each guarantee issued under this section shall be provided in the form prescribed in Appendix 67-3 of this chapter.
- 6706.4 Within one hundred twenty (120) days after the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of §6703 based on year-end financial statements for the latest completed financial reporting year by completing a letter of assurance from the chief financial officer, as described in §6703.3, and delivering the letter to the owner.
- 6706.5 If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within one hundred twenty (120) days after the end of that financial reporting year, the guarantor shall notify the owner by certified mail (return receipt requested) before cancellation or non-renewal of the guarantee.
- 6706.6 If the Director notifies the guarantor that the guarantor no longer meets the requirements of the financial test of §6704 or 6705 and §6703.3, the guarantor shall notify the owner by certified mail (return receipt requested) within ten (10) days of receiving the notification from the Director.
- 6706.7 If the guarantor no longer meets the financial test, as provided in §6706.5 or 6706.6, the guarantee shall terminate not less than one hundred twenty (120) days after the date the owner receives the notification, as evidenced by the return receipt. The owner shall obtain alternative coverage, in accordance with the provisions of §§6715.3 through 6715.5.

6706.8 An owner who uses a guarantee to satisfy the requirements of §6700 shall establish a standby trust fund when the guarantee is obtained.

6706.9 Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee shall be deposited directly into the standby trust fund in accordance with instructions from the Director under §6712. The standby trust fund shall meet the requirements of §6711 of this chapter.

6707 INSURANCE AND RISK RETENTION GROUP COVERAGE

6707.1 An owner may satisfy the requirements of §6700 by obtaining liability insurance that meets the requirements of this section from a qualified insurer or risk retention group.

6707.2 The liability insurance required under this section may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

6707.3 Each certificate of insurance and each insurance policy endorsement issued under this section shall be in the form prescribed in Appendix 67-4 and Appendix 67-5 of this chapter.

6707.4 Each insurance policy shall be issued by an insurer or risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the District of Columbia.

6708 SURETY BONDS

6708.1 An owner may satisfy the requirements of §6700 by obtaining a surety or performance bond that conforms to the requirements of this section.

6708.2 The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

6708.3 Each surety bond shall be provided in the form prescribed in Appendix 67-6 of this chapter.

6708.4 Under the terms of the bond, the surety shall become liable on the bond obligation when the owner fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums set forth in §6700.

6708.5 The owner who uses a surety bond to satisfy the requirements of §6700 shall establish a standby trust fund when the surety bond is acquired.

6708.6 Under the terms of the bond, all amounts paid by the surety under the bond shall be deposited directly into the standby trust fund in accordance with instructions from the Director under §6712. This standby trust fund shall meet the requirements specified in §6711.

6709 LETTER OF CREDIT

- 6709.1 An owner may satisfy the requirements of §6700 by obtaining an irrevocable standby letter of credit that meets the requirements of this section.
- 6709.2 The issuing institution shall be an entity that has the authority to issue letters of credit in the District of Columbia and whose letter of credit operations are regulated and examined by an agency of the federal government or the District of Columbia.
- 6709.3 Each letter of credit issued under this section shall be in the form prescribed in Appendix 67-7 to this chapter.
- 6709.4 An owner that uses a letter of credit to satisfy the requirements of §6700 shall also establish a standby trust fund when the letter of credit is acquired.
- 6709.5 Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Director shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Director under §6712. The standby trust fund shall meet the requirements specified in §6711.
- 6709.6 Each letter of credit shall be irrevocable with a term specified by the issuing institution.
- 6709.7 Each letter of credit shall provide that credit be automatically renewed for the same term as the original term, unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies the owner by certified mail (return receipt requested) of its decision not to renew the letter of credit. Under the terms of the letter of credit, the one hundred twenty (120) days shall begin on the date when the owner receives the notice, as evidenced by the return receipt.

6710 PRIVATE TRUST FUNDS

- 6710.1 An owner may satisfy the requirements of §6700 by establishing a trust fund that conforms to the requirements of this section.
- 6710.2 The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by an agency of the federal government or the District of Columbia.
- 6710.3 Each trust agreement shall be in the form prescribed by the Director and shall be accompanied by a formal certification of acknowledgement in the form prescribed in Appendix 67-8 of this chapter.
- 6710.4 The trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.
- 6710.5 If the value of the trust fund is greater than the required amount of coverage, the owner may submit a written request to the Director for release of the excess.

6710.6 If other financial assurance, or combination of assurance mechanisms, as specified in §§6703 through 6709, is substituted for all or part of the trust fund, the owner may submit a written request to the Director for release of the excess.

6710.7 Within sixty (60) days after receiving a request from the owner for release of funds, as specified in §6710.5 or 6710.6 of this section, the Director shall instruct the trustee in writing to release to the owner a specified amount of excess funds determined by the Director to be the proper amount for compliance with the requirements of this chapter.

6711 STANDBY TRUST FUNDS

6711.1 An owner using any of the mechanisms authorized under §6706, 6708, or 6709 shall establish a standby trust fund when the mechanism is acquired.

6711.2 The trustee of a standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are examined and regulated by an agency of the federal government or the District of Columbia.

6711.3 Each standby trust agreement or trust agreement shall be in the form prescribed in Appendix 67-8 of this chapter, and shall be accompanied by formal certification of acknowledgement also in the form prescribed in Appendix 67-8.

6711.4 The Director shall instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the Director determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

6711.5 An owner may establish a single trust fund as the depository mechanism for all funds assured in compliance with this chapter, including standby trust funds.

6712 DRAWING ON FINANCIAL ASSURANCE MECHANISM

6712.1 The Director shall require a guarantor, surety, or issuer of a letter of credit to place the amount of funds stipulated by the Director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if both of the following occur:

- (a) The owner fails to establish alternate financial assurance within sixty (60) days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and
- (b) The Director determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator, or the owner or operator has notified the Director of a release from an underground storage tank covered by the assurance mechanism.

6712.2 The Director shall require a guarantor, surety, or person issuing a letter of credit to place a specified amount of funds, up to the limit of funds provided by the financial assurance mechanism, into a standby trust if either of the following occurs:

- (a) The Director makes a final determination that a release has occurred, that corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted the required corrective action under Chapter 62; or
- (b) The Director has received either of the following:
 - (1) Certification that a third-party liability claim should be paid, in accordance with §6712.3(b)(1); or
 - (2) A valid final court order establishing a judgment against the owner or operator, and the Director determines that the owner or operator has not satisfied the judgment.

6712.3 The Director may draw on a standby trust fund when either of the following occurs:

- (a) The Director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under Chapter 62; or
- (b) The Director has received either of the following:
 - (1) Certification from the owner, the third-party liability claimant(s), and the attorney(s) representing the owner and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification shall be in the form prescribed in Appendix 67-9 to this chapter; or
 - (2) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this chapter, and the Director determines that the owner or operator has not satisfied the judgment.

6712.4 If the Director determines that the amount of corrective action costs and third-party liability claims eligible for payment as provided in §6712.3(b) of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment.

6712.5 The Director shall pay third-party liability claims in the order in which the Director receives certifications and valid court orders under §6712.3(b).

6713 REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS

6713.1 If at any time after a standby trust is funded upon the instruction of the Director with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner shall do either of the following by the anniversary date of the financial mechanism from which the funds were drawn:

- (a) Replenish the value of financial assurance to equal the full amount of coverage required; or
- (b) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

6713.2 For purposes of this section, the full amount of coverage required is the amount of coverage to be provided under §6700. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

6714 CANCELLATION OR NON-RENEWAL OF FINANCIAL ASSURANCE

6714.1 Except as otherwise provided in this chapter, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail (return receipt requested) to the owner.

6714.2 Termination of a guarantee, surety bond, or letter of credit may not occur until one hundred twenty (120) days after the date on which the owner receives the notice of termination, as evidenced by the return receipt.

6714.3 Termination of insurance or risk retention group coverage, except for non-payment or misrepresentation by the insured may not occur until sixty (60) days after the date on which the owner receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of ten (10) days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

6714.4 The provider of financial assurance shall send a copy of each notice of cancellation or termination to the Director at the same time the notice is sent to the owner.

6714.5 If a provider of financial responsibility cancels or fails to renew for reasons other than the incapacity of the provider as specified in §6701.7, the owner shall obtain alternate coverage as specified in this section within sixty (60) days after receipt of the notice of termination.

6714.6 If an owner fails to obtain alternate coverage within sixty (60) days after receipt of a notice of termination, the owner shall notify the Director of the failure and submit the following to the Director:

- (a) The name and address of the provider of financial assurance;
- (b) The effective date of termination; and
- (c) The evidence of the financial assistance mechanism subject to the termination maintained in accordance with §6702 of this chapter.

6715 BANKRUPTCY OR INCAPACITY

6715.1 Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 of the United States Code (Bankruptcy), naming an owner as debtor, the owner shall notify the Director by certified mail (return receipt requested) of the commencement of the proceedings and submit to the Director the appropriate forms listed in §§6702.4 through 6702.7, documenting current financial responsibility.

6715.2 Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 of the United States Code (Bankruptcy), naming a guarantor providing financial assurance as debtor, the guarantor shall notify the owner by certified mail (return receipt requested) of the commencement of proceedings, as required under the terms of the guarantee specified in §6706 of this chapter.

6715.3 An owner who obtains financial assurances by a mechanism other than the financial test of self-insurance shall be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit.

6715.4 An owner shall obtain alternate financial assurance, in accordance with the requirement of this chapter, within thirty (30) days after receiving notice of the bankruptcy or incapacity of its provider of financial assurance, or the suspension or revocation of the authority of its provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit.

6715.5 If an owner does not obtain alternate coverage within thirty (30) days after notification of bankruptcy or incapacity, as provided in this section, the owner shall notify the Director.

APPENDIX 67-1

CERTIFICATION OF FINANCIAL RESPONSIBILITY

_____ hereby certifies that is in compliance with the financial responsibility
[owner]

requirements of Chapter 67.

The financial assurance mechanism(s) used to demonstrate financial responsibility under Chapter 67 of this title are as follows:

[Type of mechanisms] _____

[Name of issuer] _____

[Mechanism number (if applicable)] _____

[Amount of coverage] _____

[Effective period of coverage] _____

Whether mechanism covers "taking correction action" or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."

[Type of mechanisms] _____

[Name of issuer] _____

[Mechanism number (if applicable)] _____

[Amount of coverage] _____

[Effective period of coverage] _____

Whether mechanism covers "taking correction action" or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."

[Signature of owner] _____

[Name of owner] _____

[Title] _____

[Date] _____

[Signature of witness or notary] _____

[Name of witness or notary] _____

[Date] _____

The owner must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

APPENDIX 67-2

**FINANCIAL TEST OF SELF INSURANCE
LETTER FROM CHIEF FINANCIAL OFFICER**

I am the chief financial officer of _____
[name and address of the owner or guarantor]

This letter is in support of the use of _____
[“the financial test of self-insurance” and/or guarantee”]

to demonstrate financial responsibility for _____
[“taking corrective action” and/or compensating

third parties for bodily injury and property damage”]

caused by _____
[“sudden accidental releases” and/or “nonsudden accidental releases”]

in the amount of at least _____
[dollar amount]

per occurrence and _____ annual aggregate arising operating (an) underground
storage
[dollar amount]

tank(s). Underground storage tanks at the following facilities are assured by this financial test by
this _____
[“owner” and/or “guarantor”]

<u>UST Facility I.D. Number</u>	<u>Number of UST(s)</u>	<u>Name/Address of UST(s) Facility</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to §5600 of this subtitle.]

A _____ is also used by

_____ [financial test and/or guarantee]

_____ [owner or guarantor]

to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 145 and 271:

EPA Regulation	Amount
Closure (§§264.143 and 265.143)	
Post-Closure Care (§§264.145 and 265.145)	_____
Liability Coverage (§§264.147 and 265.147)	_____
Corrective Action (§264.101(b))	_____
Plugging and Abandonment (§144.63)	_____
Closure _____	
Post-Closure Care	_____
Liability Coverage	_____
Corrective Action	_____
Plugging and Abandonment _____	
Total	_____

This _____ has not received an adverse opinion, a disclaimer of opinion, or a
[owner or guarantor]
“going concern” qualification from an independent auditor on his or her financial statements for
the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of §6704 are being used to demonstrate
compliance with the financial test requirements. Fill in the information for Alternative II if the
criteria of §6705 are being used to demonstrate compliance with the financial test requirements.]

Alternative I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee. \$ _____
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee. \$ _____
3. Sum of lines 1 and 2 _____ \$ _____
4. Total tangible assets _____ \$ _____
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] _____ \$ _____
6. Tangible net worth [subtract line 5 from line 4] \$ _____
Yes No
7. Is line 6 at least ten million dollars (\$10,000,000)? _____
8. Is line 6 at least 10 times line 3? _____
9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? _____
10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? _____
11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? _____
12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.] _____
13. Has financial information been provided to the Board of Governors of the Federal Reserve System, the Comptroller of the Currency or the Federal Deposit Insurance Corporation? _____

Alternative II

1.	Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee.		\$ _____
2.	Amount of corrective action, closure and post-closure care cost, liability coverage, and plugging and abandonment costs covered by a financial test or guarantee		\$ _____
3.	Sum of lines 1 and 2 _____		\$ _____
4.	Total tangible assets _____		\$ _____
5.	Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] _____		\$ _____
6.	Tangible net worth [subtract line 5 from line 4]		\$ _____
7.	Total assets in the U.S. [required only if less than ninety percent (90%) of assets are located in the U.S.] _____		\$ _____
		Yes	No
8.	Is line 6 at least ten million dollars (\$10,000,000)?	_____	_____
9.	Is line 6 at least six (6) times line 3?	_____	_____
10.	Are at least ninety percent (90%) of assets located in the U.S.? [If "No," complete line 11]	_____	_____
11.	Is line 7 at least six (6) times line 3? [Fill in either lines 12-15 or lines 16-18:]	_____	_____
12.	Current Assets _____		\$ _____
	—		
13.	Current Liabilities _____		\$ _____
14.	Networking capital [subtract line 13 from line 12]		
	\$ _____		
		Yes	No
15.	Is line 14 at least 6 times line 3?	_____	_____
16.	Current bond rating of most recent bond issue.	_____	_____
17.	Name of rating service _____		
18.	Date of maturity of bond _____		

Alternative II (Continued)

Yes

No

19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, the Rural Electrification Administration, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency or the Federal Deposit Insurance Corporation?

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in Appendix 67-2 to the UST Regulations, DCMR Title 20, Environment, as such regulations were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

APPENDIX 67-3

GUARANTEE

Guarantee made this _____,
by _____, a
[date] [name of guaranteeing entity]
business entity organized under the laws of the District of Columbia, herein referred to as guarantor, to the
Department of Health (DOH) and to any and all third parties, and obligees, on behalf of

[owner] [business address]

RECITALS:

- (1) Guarantor meets or exceeds the financial test criteria of §6703 or 6704 and §6705 and agrees to comply with the requirements for guarantors as specified in §6706.4.
- (2) _____ owns the following underground storage tank(s) covered by this guarantee:
[owner]

<u>UST Facility I.D. Number</u>	<u>Number of UST(s)</u>	<u>Name/Address of UST(s) Facility</u>

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to §5600, and the name and address of the facility.]

This guarantee satisfies Chapter 67 requirements for assuring funding for

and/

["taking corrective action"]

or “compensating third parties for bodily injury and property damage caused by either “sudden accidental

releases” or “nonsudden accidental releases” or “accidental releases”; if coverage is different for different

arising from
operating tanks or locations, indicate the type of coverage applicable to each tank or location]

the above-identified underground storage tank(s) in the amount of _____
per _____

occurrence and _____ annual aggregate. [dollar amount]
[dollar amount]

- (3) [Insert appropriate phrase: “On behalf of our subsidiary” (if guarantor is corporate parent of the owner); “On behalf of our affiliate” (if guarantor is a related firm of the owner); or “Incident to our business

relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner]_____ guarantor guarantees to the DOH and to any and all

[owner]

third parties that:

In the event that _____ fails to provide alternate coverage within sixty (60) days after receipt of a notice of cancellation of this guarantee and the Director has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Director, shall fund a standby trust fund in accordance with the provisions of §6712, in an amount not to exceed the coverage limits specified above.

In the event that the Director determines that _____ has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with Chapter 62, the guarantor upon written instructions from the Director shall fund a standby trust fund in accordance with the provisions of §6712 in an amount not to exceed the coverage limits specified above.

If _____ fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by _____ accidental

["sudden" or "nonsudden"]

releases arising from the operation of the above identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Director, shall fund a standby trust fund in accordance with the provisions of §6712 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

- (4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of §6703 or 6704 and §6705, guarantor shall send within one hundred twenty (120) days of such failure, by certified mail notice to owner. The guarantee will terminate one hundred twenty (120) days from the date of receipt of the notice by _____, as evidenced by the return receipt.

[owner]

- (5) Guarantor agrees to notify _____ by certified mail of a voluntary or involuntary proceeding

[owner]

under Title II (Bankruptcy), U.S. Code, naming guarantor as debtor, within ten (10) days after commencement of the proceeding.

- (6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of _____ pursuant to Chapter 67 of this title.

[owner]

- (7) Guarantor agrees to remain bound under this guarantee for so long as _____ must comply with

[owner]

the applicable financial responsibility requirements of the regulations under Chapter 67 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to _____, such cancellation to become effective no earlier than one hundred twenty (120) days

[owner]

after receipt of such notice by _____ as evidenced by the return receipt.
[owner]

(8) The guarantor's obligation does not apply to any of the following:

- (a) Any obligation of _____ under a workers' compensation, disability benefits, or
[owner]
unemployment compensation law or other similar law;

- b) Bodily injury to an employee of _____ arising from, and in the course of, employment by
[owner]
_____;
[owner]
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care of, custody, or control of, or occupied by _____ that is not the direct result of a release from a petroleum underground storage tank; and
[owner]
- (e) Bodily damage or property damage for which _____ is obligated to pay damages by reason
[owner]
of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of §§6700.10 through 6700.17; and
- (9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by _____.
[owner]

I hereby certify that the wording of this guaranteed is identical to the wording specified in Appendix 67-3 as such regulations were constituted on the effective date shown immediately below.

Effective date _____

Name of guarantor _____

Authorized signature for guarantor _____

Name of person signing _____

Title of person signing _____

Signature of witness or notary _____

APPENDIX 67-4

CERTIFICATE OF INSURANCE

Name and address of each covered location:

Policy number:

Endorsement (if applicable):

Period of coverage: [current policy period] _____

Name of [Insurer or Risk Retention Group]:

Address of Insurer or Risk Retention Group:

Name of insured:

Address of insured:

CERTIFICATION:

(1) _____, the "Insurer"
[name of Insurer or Risk Retention Group]

or "Group" as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tanks:

<u>UST Facility I.D. Number</u>	<u>Number of UST(s)</u>	<u>Name/Address of UST Facility</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to §5600 of this subtitle and the name and address of the facility.] for

[insert: "taking corrective action" and/
or

"compensating third parties for bodily injury and property damage caused by" either "sudden accidental

releases" or "nonsudden accidental releases" or "accidental releases" in accordance with and subject to the limits of

liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or

_____ arising from operating the locations, indicate the type of coverage applicable to each tank or location] underground storage tank(s) identified above.

The limits of liability are

[insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer’s or Group’s liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs which are subject to a separate limits under the policy.

This coverage is provided
under _____
[policy number]

date of said policy is _____
[date]

(2) The “Insurer” or “Group” further certifies the following with respect to the insurance described in paragraph 1:

- (a) Bankruptcy or insolvency of the insured shall not relieve the _____ of its obligations [Insurer or Group] under the policy to which this certificate applies.
- (b) The _____ is liable for the payment of amounts within any deductible [Insurer or Group] applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured from any such payment made by the _____. This [Insurer or Group] provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §§6703 through 6710.
- (c) Whenever requested by the Director, the _____ agrees to furnish to the Director [Insurer or Group] a signed duplicate original of the policy and all endorsements.
- (d) Cancellation or any other termination of the insurance by the _____ except for non- [Insurer or Group] payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten (10) days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten (10) days after a copy of such written notice is received by the insured.

Insert for claims-made policies:

- (e) The insurance covers claims otherwise covered by the policy that are reported to the _____ within six (6) months of the effective date of cancellation or non-renewal of the [Insurer or Group]

policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this instrument is identical to the wording in Appendix 67-4 of the UST Regulations, (DCMR Title 20, Environment, and that the

_____ Insurer or Group]
is _____
[licensed to transact the business of insurance, or eligible to provide insurance as an
excess _____
or surplus lines insurer, in one or more states”].

[Signature of Authorized Representative of _____ Insurer]
[Name of person signing] _____
[Title of person signing] _____
Authorized representative of _____
Insurer or Risk Retention Group]
Address of Representative] _____

APPENDIX 67-5

ENDORSEMENT

Name and address of each covered

location: _____

Policy number: _____

Period of coverage: [current policy

period] _____

Name and address of [Insurer or Risk Retention

Group]: _____

Name of insured: _____

Address of insured: _____

ENDORSEMENT:

- (1) This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

<u>UST Facility I.D. Number</u>	<u>Number of UST(s)</u>	<u>Name/Address of UST Facility</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to §5600 of this subtitle and the name and address of the facility.]

For _____

[insert: "taking corrective action" and/or "compensating third parties for bodily injury and property

releases" or _____ damage caused by" either "sudden accidental releases" or "nonsudden accidental

of liability, exclusions, conditions, _____ "accidental releases" in accordance with and subject to the limits

and other terms of the policy; if coverage is different for different tanks or locations, indicate the type _____

of coverage applicable to each tank or arising from operating the underground storage tank(s) location] _____

_____ identified above.

The limits of liability are

_____[Insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer’s or Group’s liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each UST or location exclusive of legal defense costs which are subject to a separate limit under the policy.]

This coverage is provided under _____ The effective date of said policy is _____.
[policy number] [date]

- (2) The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; Provided, however, that any provisions inconsistent with subsections (a) through (e) of this paragraph 2 are hereby amended to conform with subsections (a) through (e):
- (a) Bankruptcy or insolvency of the insured shall not relieve the _____ of its [Insurer or Group] obligations under the policy to which this endorsement is attached;
- (b) The _____ is liable for the payment of amounts within any deductible [Insurer or Group] applicable to the policy to the provider of corrective action or a damage third-party, with a right of reimbursement by the insured for any such payment made by the _____. [Insurer or Group]
This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §6703 through §6710 of this title;
- (c) Whenever requested by the Director _____ agrees to furnish to the Director [Insurer or Group] a signed duplicate original of the policy and all endorsements;
- (d) Cancellation or any other termination of the insurance by the _____ except for non- [Insurer or Group] payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten (10) days after a copy of such written notice is received by the insured [Insert for claims made policies]; and
- (e) The insurance covers claims otherwise covered by the policy that are reported to the _____ within six (6) months of the effective date of the cancellation or non- [Insurer or Group] renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy].

I hereby certify that the wording of this instrument is identical to the wording in Appendix 67-5 to the UST Regulations (DCMR Title 20, Environment) and that the

[Insurer or Group]

is _____
[licensed to transact the business of insurance or eligible to provide insurance as

excess or surplus lines insurer in one or more states”].

[Signature of Authorized Representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing]

[Authorized Representative of]

[name of Insurer or Risk Retention Group]

[Address of Representative] _____

APPENDIX 67-6

PERFORMANCE BOND

Date bond executed: _____

Period of
coverage: _____

Principal: [legal name and business address of
owner] _____

Type or Organization: [insert "individual," "joint venture," "partnership," or
"corporation"] _____

State of incorporation (if
applicable): _____

Surety(ies): [name(s) and business address(es)] _____

SCOPE OF COVERAGE:

<u>UST Facility I.D. Number</u>	<u>Number of UST(s)</u>	<u>Name/Address of UST(s) Facility</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to §5600 of this title, and the name and address of the facility as above.]

List the coverage guaranteed by the bond:

 [“Taking corrective action” or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases” arising from operating the underground storage tank.]

Penal Sums of Bond:

Per-occurrence \$ _____

Annual aggregate \$ _____

Surety’s bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the District of Columbia Department of Health (DOH) in the above penal sums for the payment of

which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; Provided, that where the Surety(ies) are corporations acting as co-sureties, we the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, to provide financial assurance for

[“Taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location]

arising from operating the underground storage tanks identified above; and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully _____

[“Take corrective action, in accordance with Chapter 62 of the UST Regulations and the Director’s instructions for,” and/or “compensate injured third parties for bodily injury and property damage causes by” either “sudden” or “nonsudden” or “sudden and nonsudden”] accidental releases arising from operating the tanks(s) identified above, or if the Principal shall provide alternative financial assurance, as specified in Chapter 67 of the UST Regulations, within one hundred twenty (120) days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

This obligation does not apply to any of the following-

- (a) Any obligation of _____ under a workers’ compensation, disability benefits, or _____
[owner]
unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of _____ arising from and in the course of employment
by _____
[owner]
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care of, custody, or control of, or occupied by _____ that is not the direct result of are lease from a petroleum under-
[owner]

ground storage tank;

- (e) Bodily injury or property damage for which _____ is obligated to pay damages _____ [Owner] by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of §§6700.10 through 6700.17.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Director that the Principal has failed to

["Take corrective action, in accordance with Chapter 62 and the Director's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform

["Corrective action in accordance with DCMR Title 20, Environment, Chapter 62 and the Director's instructions," or third-party liability compensation"]

or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Director under §6712.

Upon notification by the Director that the Principal has failed to provide alternate financial assurance within sixty (60) days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Director has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Director under §6712.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statute, rules and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal; Provided, however, that cancellations shall not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Appendix 67-6 of the UST Regulations (DCMR Title 20, Environment) on the date this bond was executed.

Principal

[Signature(s)] _____

[Names] _____

[Title(s)] _____

[Corporate seal] _____

Corporate surety(ies)

[Name and address] _____

[State of incorporation] _____

[Liability limit]

\$ _____

[Signature(s)] _____

[Names(s) and title(s)] _____

[Corporate seal] _____

[For every co-surety, provide signature (s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ _____

APPENDIX 67-7

IRREVOCABLE STANDBY LETTER OF CREDIT

 [name and address of issuing institution]

 [Name and address of Director and Deputy Director of D.C. Department of Health (DOH)]

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of _____ of _____ up to the aggregate amount of

 [owner] [address] [in words]
 U.S. dollars (\$ _____) available upon presentation

 [insert dollar amount] [insert, if more than one Director

of a state implementing agency is a beneficiary, "by any one of you"]

- (1) Your sight draft, bearing reference to this letter of credit, No. _____; and
- (2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended."

This letter of credit may be drawn on to cover

 [insert: "taking corrective action" and/or "compensating third
 parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden
 _____ arising from operating the underground storage tank(s)
 accidental releases" or "accidental releases"]
 identified below in the amount of _____

 [in words] \$[insert dollar amount]
 per occurrence and _____ annual

 [in words] \$[insert dollar amount]
 aggregate.

<u>UST Facility I.D.</u> <u>Number</u>	<u>Number of UST(s)</u> <u>UST(s) Facility</u>	<u>Name/Address of</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to §5600 of this subtitle, and the name and address of the facility as above.]

The letter of credit may not be drawn on to cover any of the following:

- (a) Any obligation of _____ under a workers' compensation, disability benefits, or _____
[owner or operator]
unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of _____ arising from, and in the course of,
[insert owner or operator]
employment by _____;
[insert owner or operator]
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by _____ that is not the direct result of a release from a petroleum underground storage tank;
[insert owner or operator]
- (e) Bodily injury or property damage for which _____ is obligated to pay
[insert owner or operator]
damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of §§6700.10 through 6700.17 of this chapter.

This letter of credit is effective as of _____ and shall expire on _____, but such expiration date shall be

[date] [date]

automatically extended for a period of _____

[at least the length of the original term]

on _____ and on each successive expiration date, unless, at least one hundred twenty (120)

[expiration date]
days before the current expiration date, we notify _____ by certified mail that we have decided
[owner or operator]
not to extend this letter of credit beyond the current expiration date. In the event that _____ is so
[owner]
notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty (120) days after the date of receipt by _____, as shown on the signed return receipt.

[owner]

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of _____ in accordance with your instructions.

[owner]

We certify that the wording of this letter of credit is identical to the wording specified in Appendix 67-7 to the UST Regulations, DCMR Title 20, Environment, on the date shown immediately below.

[Signature(s) and title(s) of _____]

official(s) of issuing institution] 1. _____ Title

2. _____ Title _____

[Date] _____

This credit is subject

to _____

[insert “the most recent edition of the Uniform Customs and Practice for Documentary

Credits, published by the International Chamber of Commerce,” or “the Uniform Commercial Code”].

APPENDIX 67-8

PRIVATE TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of _____ by and between

_____,
[date] [name of owner]
a _____ ["corporation", "partnership," "association," or "proprietorship"], the "Grantor,"
[name of state]
and _____
[name of corporation]

"Incorporated in the State of _____" or "a
_____ national bank]

The Trustee."

Whereas, the Department of Health (DOH) an agency of the District of Columbia Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the standby trust agreement.

[Whereas, the Grantor has elected to establish

[Insert either "a guarantee," "surety bond," or "letter of credit"]

to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee; Now, therefore, the Grantor and the Trustee agree as follows:

SECTION 1. DEFINITIONS

As used in this Agreement:

- (a) The term "Grantor" means the owner who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

SECTION 2. IDENTIFICATION OF THE FINANCIAL ASSURANCE MECHANISM

This Agreement pertains to the

[identify the financial assurance mechanism, either a guarantee, surety bond, or

letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement)].

SECTION 3. ESTABLISHMENT OF FUND

The Grantor and the Trustee hereby establish a trust fund, the “Fund,” for the benefit of [the Department]. The Grantor and the Trustee intend that no third-party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Director’s instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Director.

SECTION 4. PAYMENT FOR [“CORRECTIVE ACTION” OR “THIRD-PARTY LIABILITY CLAIMS”]

The Trustee shall make payments from the Fund as the Director shall direct, in writing, to provide for the payment of the costs of

[insert: “taking corrective action” or “compensating third parties for bodily injury and property

damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”]

arising from operating the tanks or covered by the financial assurance mechanism identified in the Agreement.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of _____ under a workers’ compensation, disability benefits, or [insert owner or operator] unemployment compensation law or other similar law;
- (b) Bodily injury to any employee of _____ arising from, and in the course of [owner or operator] employment by _____; [insert owner or operator]
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by _____ that is not the direct result of a release from a petroleum [insert owner or operator] underground storage tank;
- (e) Bodily injury or property damage for which _____ is obligated to pay damages by reason [owner or operator] of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of §§6700.10 through 6700.17 of this chapter.

The Trustee shall reimburse the Grantor, or other persons as specified by the Department, from the Fund for corrective action expenditures or third-party liability claims in such amounts as the Director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

SECTION 5. PAYMENTS COMPRISING

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

SECTION 6. TRUSTEE MANAGEMENT

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time-to-time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and
- (c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

SECTION 7. COMMINGLING AND INVESTMENT

The Trustee is expressly authorized in its discretion:

- (a) To transfer from time-to-time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

SECTION 8. EXPRESS POWERS OF TRUSTEE

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

SECTION 9. TAXES AND EXPENSES

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

SECTION 10. ADVICE COUNSEL

The Trustee may from time-to-time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

SECTION 11. TRUSTEE COMPENSATION

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time-to-time with the Grantor.

SECTION 12. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent

jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

SECTION 13.**INSTRUCTIONS TO THE TRUSTEE**

All orders, requests, and instructions by the Grantor to the trustee shall be in writing, signed by such persons as are designated in Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Director to the Trustee shall be in writing, signed by the Director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Director, except as provided for herein.

SECTION 14.**AMENDMENT OF AGREEMENT**

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee or by the Trustee and the Director if the Grantor ceases to exist.

SECTION 15.**IRREVOCABILITY TERMINATION**

Subject to the right of the parties to amend this Agreement as provided in Section 14 above, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

SECTION 16.**INDEMNIFICATION**

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

SECTION 17.**CHOICE OF LAW**

This Agreement shall be administered, construed, and enforced according to the laws of the District of Columbia, or the Comptroller of the Currency in the case of National Association banks.

SECTION 18.**INTERPRETATION**

As used in this Agreement, words in singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

Title 20**District of Columbia Municipal Regulations**

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Appendix 67-8 to the UST Regulations, DCMR Title 20, Environment, on the date written above.

[Signature of grantor]
[Name of the grantor]
[Title]

Attest:

[Signature of trustee]
[Name of trustee]
[Title]

[Seal]

Attest:

[Signature of witness]
[Name of witness]
[Title]

[Seal]

The standby trust agreement or trust agreement must be accompanied by a formal certification of acknowledgement similar to the following:

District of Columbia, ss:

_____ On this _____, before me personally came
_____ to me known, who, being by me duly sworn, [date] [owner]

did depose and say that he/she resides at _____ that he/s he is

[address]

[title]

of _____, the corporation described in and which executed the above instrument; that he/she knows

[corporation]

the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he/she signed his/her name thereto by like order.

[Signature of notary public] _____

[Name of notary public] _____

SCHEDULE A TO PRIVATE TRUST AGREEMENT

UST(s) Facility I.D.
Number

Number of UST(s)

Name/Address
UST Facility

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to §5600 of this subtitle, and the name and address of the facility as above.]

SCHEDULE B TO PRIVATE TRUST AGREEMENT

[Grantor should list here the name, title, and business address of each person with authority to issue orders, requests or instructions pertaining to this Private Trust Agreement on behalf of Grantor.]

APPENDIX 67-9

CERTIFICATION OF VALID CLAIM

The undersigned, as principals and as legal representatives of _____
[owner]
and _____
[insert name and address of third-party claimant]

hereby certify that the claim of bodily injury [and/or] property damage caused by accidental release
arising from operating _____ underground storage tank should be paid in the
[owner or operator]
amount of \$[_____].

[Signature(s)] _____	[Signature(s)] _____
Owner or operator _____	Claimant(s) _____
Attorney for _____	Attorney(s) for _____
Owner _____	Claimant(s) _____
(Notary) _____ Date _____	(Notary) _____ Date _____

CHAPTER 70

DEFINITIONS

Sec.
7099.1 Definitions

7099 DEFINITIONS

7099.1 When used in this subtitle, the following terms and phrases shall have the meanings ascribed:

Aboveground release - any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST system and releases associated with overfills and transfer operations as a regulated substance moves to or from an UST system.

Accidental release - any sudden or non-sudden release of petroleum or other substance from an underground storage tank that was neither expected nor intended by the tank owner or operator, and which results in the need for corrective action or compensation for bodily injury or property damage.

Act – the District of Columbia Underground Storage Tank Management Act of 1990, as amended, D.C. Law 8-242; D.C. Code §6-995.1 *et seq.* (1995 Repl. Vol.).

Active remediation — actions taken to reduce the concentrations of chemical(s) of concern. Monitored natural attenuation, non-pressurized subsurface venting or any other technology involving limited activities as determined by the Director, are not active remediation.

Ancillary equipment - any device including, but not limited to, piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an underground storage tank.

Attenuation — the reduction in concentrations of chemical(s) of concern in the environment with distance and time due to processes such as diffusion, dispersion, absorption, chemical degradation, biodegradation, and so forth.

Belowground release - any release to the subsurface of the land or to groundwater. This includes, but is not limited to, releases from the below ground portion of any UST system and belowground releases associated with overfills and transfer operations as a regulated substance moves to or from an UST.

Beneath the surface of the ground - any item or area actually located beneath the ground surface or that is covered with earthen materials.

Bodily injury - has the meaning currently applicable under the law of the District of Columbia. However, the term is not intended to include those liabilities which, consistent with standard insurance industry practices applicable to the District of Columbia, are excluded from coverage in liability insurance policies for bodily injury.

Cannot be located – shall mean the failure to locate an owner or operator of a tank after searching diligently for a period of six (6) months.

Case closure letter -- a letter issued for sites that have achieved Tier 0 or Tier 1 cleanup standards. A case closure letter may be referred to as a “site closure” letter. Issue of a case/site closure letter implies a “complete” remedy of the release and that liability has been addressed fully.

Cathodic protection - a technique for preventing corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

Cathodic protection tester - a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, a tester has education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

CERCLA - the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

Chemical(s) of concern — specific constituents that are identified for evaluation in the risk assessment process.

Chemical release--any spill or leak or detection of concentrations of chemical(s) of concern in environmental media.

Compatible - the ability of two (2) or more substances to maintain the respective physical and chemical properties upon contact with one another for the design life of the underground tank system under conditions likely to be encountered in an UST system.

Connected piping - all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which a regulated substance flows. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two (2) UST systems is allocated equally between them.

Consumptive use - consumed on the premises, when describing heating oil use.

Controlling interest - the direct ownership by one (1) person or entity of at least fifty percent (50%) of the voting stock of another entity.

Corrective action — the sequence of actions that include site investigation, site assessment, interim remedial action, remedial action, operation and maintenance of equipment, monitoring of progress, and termination of the remedial action.

Corrosion expert - a person who, by reason of a thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired through a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. A corrosion expert is a person who has been accredited or certified as being qualified by the National Association of Corrosion Engineers or is a registered professional engineer with certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

Department - the District of Columbia Department of Health.

Dielectric material - a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of an UST system (i.e., a tank from piping).

Director - the Director of the Department of Health or Director's designee or the Head of the Underground Storage Tank Division.

Earthen materials - earth, soil, ground, clay, gravel, sand, silt, rock, cement, concrete.

Electrical equipment - underground equipment that contains dielectric fluid that is necessary for the operation of equipment, such as transformers and buried electrical cable.

Engineering controls — modifications to a site or facility (for example, slurry walls, capping, and point of use water treatment) to reduce or eliminate the potential for exposure to chemical(s) of concern.

Environmentally sensitive receptors — wetlands, wildlife breeding and wintering areas for species of concern, habitats for endangered plant and animal species, and Federal and local parks. For purposes of the District of Columbia UST RBCA program, groundwater and surface waters shall be treated as receptors when preparing exposure or risk assessments.

Excavation zone - the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which an UST system is placed at the time of installation.

Existing tank system - a tank system used to contain an accumulation of a regulated substance or for which installation commenced on or before November 12, 1993. Installation is considered to have commenced if the owner or operator has obtained all federal and District of Columbia government approvals or permits necessary to begin physical construction of the site or installation of the tank system, and either of the following has occurred:

- (a) Either a continuous on-site physical construction or installation program has begun; or
- (b) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

Exposure — contact of an organism with chemical(s) of concern at the exchange boundaries (for example, skin, lungs, and liver) and available for absorption.

Exposure Assessment - An assessment to determine the extent of exposure of, or potential for exposure of, individuals to regulated substances from a release from an underground storage tank based on such factors as the nature and extent of the contamination and the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community within the likely pathways of exposure, and the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants.

Exposure pathway — the course a chemical(s) of concern takes from the source area(s) to an exposed organism. An exposure pathway describes a unique mechanism by which an individual or population is exposed to a chemical(s) of concern originating from a site. Each exposure pathway includes a source or release from a source, a point of exposure, and an exposure route. If the exposure point differs from the source, a transport/exposure medium (for example, air) or media also is included.

Exposure route — the manner in which a chemical(s) of concern comes in contact with an organism (for example, ingestion, inhalation, and dermal contact).

Facility - In accordance with §2 of the District of Columbia Underground Storage Tank Management Act (the “Act”), one (1) or more underground storage tanks at a given location. For purposes of releases, “the property containing the source of the chemical(s) of concern where a release has occurred.

Farm tank - an UST located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank is actually located on farm property. For purposes of this definition, the term “farm” includes fish hatcheries, rangeland, and nurseries with growing operations.

Financial reporting year - the latest consecutive twelve (12) month period (either a fiscal or a calendar year) for which any of the following reports used to support a financial test is prepared:

- (a) An annual report of tangible net worth submitted to Dun & Bradstreet;
- (b) A 10-K report submitted to the Securities & Exchange Commission; or
- (c) Annual reports submitted to the Energy Information Administration or the Rural Electrification Administration.

Fire Prevention Code – the District of Columbia Fire Prevention Code Supplement of 1992, Title 12 DCMR, D.C. Construction Codes Supplement of 1992.

Flow - through process tank - a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

Free product - a regulated substance that is present as a non-aqueous phase liquid (liquid that is not dissolved in water).

Gathering line - any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

Guarantor - In accordance with §2 of the Act, any person, other than the owner, who provides evidence of financial responsibility for an underground storage tank or UST facility.

Hazard index — the sum of two or more hazard quotients for multiple chemical(s) of concern or multiple exposure pathways, or both.

Hazard quotients — the ratio of the level of exposure of chemical(s) of concern over a specified time period to a reference dose for that chemical(s) of concern derived for a similar exposure period.

Hazardous substance UST system - an underground storage tank system that is not a petroleum UST system, and which contains a hazardous substance defined in §101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (the “Superfund” Act), but not including any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act, or any mixture of those hazardous substances and petroleum.

Heating oil - petroleum that is No. 1, No. 2, No. 4 (light), No. 4 (heavy), No. 5 (light), No. 5 (heavy), and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for any of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

Hydraulic lift tank - a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate a lift, elevator, or other similar device.

Initial response action--the course of action to mitigate hazards to human health, safety and the environment, including immediate or short-term abatement or containment measures to prevent the spread of a release.

Institutional controls — the restriction on use or access (for example, fences, deed restrictions, restrictive zoning) to a site or facility to eliminate or minimize potential exposure to a chemical(s) of concern.

Interim remedial action — the course of action to mitigate fire and safety hazards and to prevent further migration of hydrocarbons in their vapor, dissolved, or liquid phase.

Legal defense cost - any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought by or on behalf of any of the following:

- (a) The U.S. Environmental Protection Agency, the District of Columbia, or a state to require corrective action or to recover the costs of corrective action;
- (b) A third party for bodily injury or property damage caused by an accidental release; or
- (c) Any person to enforce the terms of a financial assurance mechanism.

Liquid trap - a sump, well cellar, or other trap used in association with oil and gas production, gathering, and extraction operations (including gas production plants) for the purpose of collecting oil, water, and other liquids. For example, liquid traps are used to temporarily collect liquids for subsequent disposition or re-injection into a production or pipeline stream, and are used to collect and separate liquids from a gas stream.

Maintenance - the normal operational upkeep to prevent an underground storage tank system from releasing a regulated substance.

Motor fuel - petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

Natural attenuation--the reduction in the concentration(s) of chemicals of concern in environmental media due to naturally occurring physical, chemical, and biological processes (for example, diffusion, dispersion, adsorption, chemical degradation, and biodegradation).

Neighboring property --- any property outside the boundaries of the real property on which the facility is located.

New tank system - an UST system that will be used to contain an accumulation of regulated substances and for which installation commenced after the effective date of these regulations.

No further action (NFA) letter -- a letter issued for sites that have accomplished only the Tier 2 site-specific cleanup goals or voluntary remediation sites for which only limited corrective actions, less than complete cleanup, were undertaken and performed by the remediation party. Issue of a no-further-action letter implies that steps necessary to stabilize and alleviate the effects of a release have been taken, but that a complete remedy either was not achieved or not undertaken and future use of the site may be restricted.

Non-aqueous phase liquids (NAPL) -- chemicals that are insoluble or only slightly soluble in water that exist on or below the water table.

Non-commercial purposes - motor fuel that is not possessed or stored for the purpose of resale.

Occurrence - an accident, including continuous or repeated exposure to conditions which results in a release from an underground storage tank. The definition set forth in this paragraph is not intended either to limit the meaning of “occurrence” in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of the term “occurrence.”

On the premises where stored - with respect to heating oil, an UST system located on the same property where the stored heating oil is used.

Operational life - the period beginning when installation of an UST system has commenced until the time the tank system is properly closed in accordance with the provisions of Chapter 61.

Operator - In accordance with §2 of the Act, any person in control of, or having responsibility for, the daily operation of an UST system.

Overfill release - a release of a regulated substance that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

Owner - In accordance with §2 of the Act, either of the following:

- (a) In the case of any UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and
- (b) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned the UST immediately before the discontinuation of its use.

Person - In accordance with §2 of the Act, the term “person” includes an individual, partnership, corporation, government corporation, trust, firm, joint stock company, association, consortium, joint venture, a commercial entity, state, municipality, commission, political subdivision of a state, the District of Columbia, the United States Government, a foreign government, or any interstate body.

Person-in-charge – an owner or person designated by the owner, an operator, or permittee as the one with direct supervisory responsibility for an activity or operation at a facility, such as the transfer of a regulated substance to or from any point in the facility.

Petitioner - anyone who files a petition including the Director or District Government.

Petroleum - In accordance with §2 of the Act, the term “petroleum” includes crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit (60° F.) and fourteen and seven tenths pounds per square inch (14.7 lbs/in.²) absolute.

Petroleum marketing facility - a facility at which petroleum is produced or refined and any facility from which petroleum is sold or transferred to other petroleum marketers or to the public.

Petroleum marketing firm - a firm owning one (1) or more petroleum marketing facilities. A firm owning other types of facilities with underground storage tanks in addition to petroleum marketing facilities is considered to be a petroleum marketing firm.

Petroleum UST system - an underground storage tank system that contains petroleum or a mixture of petroleum with *de minimis* quantities of other regulated substances. Petroleum UST systems include those systems containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

Pipe or piping - a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

Pipeline facilities (including gathering lines) - new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

Point(s) of compliance--a location(s) selected between the source area(s) and the potential point(s) of exposure where concentrations of chemical(s) of concern must be at or below the determined target levels in media (for example, ground water, soil, or air).

Point(s) of exposure--the point(s) at which an individual or population may come in contact with a chemical(s) of concern originating from a site.

Pressurized or under pressure - where UST system piping regularly carries a regulated substance with a force behind the flow that is greater than the ambient atmospheric pressure at the UST system site.

Program Manager - Program Manager of the Underground Storage Tank Division of Department of Health or the Program Manager's designee.

Property damage - for purposes of this Subtitle, the term "property damage" has the meaning currently applicable to this term under the law of the District of Columbia. However, the term is not intended to include those liabilities which, consistent with standard insurance industry practices applicable to the District of Columbia, are excluded from coverage in liability insurance policies for property damage. However, exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

Provider of financial assurance - an entity that provides financial assurance to an owner or operator of an underground storage tank through one or more of the mechanisms set forth in this subtitle (§§6700 through 6715) including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, or other mechanism approved by the District of Columbia.

Reasonably anticipated future use — future use of a site or facility that can be predicted with a high degree of certainty given current use, local government planning, and zoning.

Receptors — persons, structures, utilities, surface waters, and water supply wells that are or may be adversely affected by a release.

Regulated substance - In accordance with §2 of the Act, the term “regulated substance” includes the following:

- (a) Hazardous substances, as defined in §101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) of 1980, 42 USC §9601(14), but not including any substance regulated as a hazardous waste under subtitle C of the Resource, Conservation, and Recovery Act (“RCRA”), 42 USC §6901 *et seq.*;
- (b) Petroleum; and
- (c) Any petroleum-based substance comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

Release - in accordance with §2 of the Act, any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or UST system. The term includes, but is not limited to, any "release" into ground water, surface water, or subsurface soils.

Release detection - a determination whether a release of a regulated substance has occurred from an UST system into the environment or into the interstitial space between an UST system and its secondary barrier or the secondary containment around an UST system.

Remediation/remedial action — any and all corrective actions taken to clean-up or to remediate a site which exceeds District of Columbia or federal standards for soil or water quality. Activities conducted to protect human health, safety, and the environment. These activities include evaluating risk, making no-further-action determinations, monitoring institutional controls, engineering controls, and designing and operating cleanup equipment.

Repair - to restore a tank or UST system component that has caused a release of product from the UST system.

Residential tank - a tank located on property used primarily for dwelling purposes.

Respondent – **any person** who is served with a notice of violation, or a proposed or immediate compliance or cease and desist order, or a notice of suspension, denial or revocation.

Responsible party - In accordance with §2 of the Act, the term “responsible party” means:

- (a) An owner or operator as defined in this chapter;
- (b) A person who caused or contributed to a release from an underground storage tank system;
- (c) A person who caused a release as a result of transfer of a regulated substance to or from an underground storage tank system;

- (d) A person found to be negligent, including any person who previously owned or operated an underground storage tank or facility, or who arranged for or agreed to the placement of an underground storage tank system by agreement or otherwise;
- (e) The owner of real property where an underground storage tank is or was located if the owner or operator of the tank as defined in this Chapter cannot be located or is insolvent, or
- (f) The owner of neighboring property where contamination from an underground storage tank is discovered if the real property owner refuses without good cause to permit the owner or operator of the tank access to the property to investigate or remediate the site.

Risk assessment — an analysis of the potential for adverse health effects caused by a chemical of concern from a site to determine the need for remedial action or the development of target levels where remedial action is required.

Risk-based-corrective action (RBCA) — a risk-based decision-making (RBDM) process designed to integrate risk and exposure assessment in response to petroleum releases; which uses a tiered approach to tailor corrective action activities to site specific conditions and risks, including exposure pathways, exposure routes, environmental receptors and allowable human health risk levels, to ensure that the chosen action is protective of human health and the environment.

Risk-based screening level/screening levels (RBSLs) — risk-based site-specific corrective action target levels for chemical(s) of concern developed under the Tier 1 evaluation.

SARA - the Superfund Amendments and Reauthorization Act of 1986.

Septic tank - a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from the receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

Site — the area(s) defined by the extent of migration of the chemical(s) of concern.

Site assessment —an evaluation of subsurface geology, hydrology, and surface characteristics to determine if a release has occurred, the levels of the chemical(s) of concern, and the extent of the migration of the chemical(s) of concern. The site assessment collects data on ground water quality and potential receptors and generates information to support remedial action decisions.

Site classification — a qualitative evaluation of a site based on known or readily available information to identify the need for interim remedial actions and further information gathering. Site classification is intended to specifically prioritize sites considering the threat to human health and the environment.

Site investigation — initial testing at the site to confirm the existence of a release by sampling the soil and water around the UST system for the presence of contaminants.

Site-specific — activities, information, and data unique to a particular site.

Site-specific target level (SSTL) — risk-based remedial action target level for chemical(s) of concern developed for a particular site under the Tier 2 evaluation.

Source(s) — the underground storage tank(s) and piping and any product contained therein. (May also be referred to as the primary source.)

Source area(s) — either the location of liquid hydrocarbons or the location of highest soil and ground water concentrations of the chemical(s) of concern. (May also be referred to as the secondary source.)

Storm water or wastewater collection system - piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

Substantial business relationship - the extent of a business relationship necessary under the applicable laws of the District of Columbia to make a guarantee contract issued incident to that relationship both valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

Subtitle — the District of Columbia Underground Storage Tank Regulations found in 20 DCMR Chapters 55 through 70.

Surface impoundment - a natural topographic depression, man-made excavation, or dike area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

Tangible net worth - the tangible assets that remain after deducting all liabilities. These assets do not include intangibles, such as goodwill and rights to patents or royalties. For purposes of this paragraph, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

Tank - a stationary device designed to contain an accumulation of regulated substances that is constructed of non-earthen materials (such as concrete, steel, or plastic) that provide structural support and containment.

Target levels — numeric values or other performance criteria that are protective of human health, safety, and the environment.

Termination - under §§6707.1, 6707.2 and 6707.3 means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date from the retroactive date of the original policy.

Tier 0 evaluation — an analysis of levels of chemicals of concern based upon a comparison of test results from soil and water samples to the District of Columbia's standards for concentrations of TPH, BTEX, and benzene in soil.

Tier 1 evaluation — a risk-based analysis to develop non-site-specific values for direct and indirect exposure pathways utilizing conservative exposure factors and fate and transport for potential pathways and various property use categories (for example, residential, commercial, and industrial uses). The Water Quality Standards for Groundwater set forth in 21 DCMR Chapter 11 and values established under Tier 1 will apply to all sites that fall into a particular category.

Tier 2 evaluation — a risk-based analysis applying the direct exposure values established under a Tier 1 evaluation at the point(s) of exposure developed for a specific site and development of values for potential indirect exposure pathways at the point(s) of exposure based on site-specific conditions.

Underground area - an underground room, such as a basement, cellar, shaft, or vault, that provides enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

Underground release - any release below the surface of the ground.

Underground storage tank or UST - in accordance with §2 of the Act, any one tank or combination of tanks (including any underground pipes) that is used to contain an accumulation of regulated substances and the volume of which (including the volume of underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. As used in these regulations the term does not include any underground storage tanks which are exempt pursuant to §5501.3 of Chapter 55.

Upgrade - the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of a regulated substance.

UST Division – the District of Columbia Underground Storage Tank Division.

UST system or tank system - an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

Voluntary remediating party — a person, who is not a responsible party, who undertakes a corrective action at a LUST site or facility.

Voluntary remediation — a corrective action performed by a non-responsible party.

Wastewater treatment tank - a tank that is designed to receive and treat an influent waste water through physical, chemical, or biological methods.